MISSISSIPPI CODE 1972

Annotated

Water, Water Resources,
Water Districts, Drainage, and Flood Control

Oil, Gas, and Other Minerals

Titles 51 to 53

TABLE OF CONTENTS

VOLUME 12A

TITLE 51

WATER, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROLS

CHAP. No.		BEGINNING SECTION
1.	Navigable Waters	51-1-1
2.	Mississippi Marine Litter Act	51-2-1
3.	Water Resources, Regulation and Control	51-3-1
4.	Mississippi Scenic Streams Stewardship Act	51-4-1
5.	Subsurface Waters; Well Drillers	51-5-1
7.	Water Management	51-7-1
8.	Joint Water Management Districts	51-8-1
9.	Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act	51-9-1
11.	Pearl River Basin Development District	51-11-1
13.	Tombigbee Valley Authority and Water Management District	51-13-1
15.	Pat Harrison Waterway Commission and District	51-15-1
17.	Big Black River Basin District	51-17-1
19.	West Central Mississippi Waterway Commission [Repealed]	51-19-1
21.	Lower Central Mississippi River Basin Develepment District [Repealed]	51-21-1
23.	Lower Yazoo River Basin District [Repealed]	51-23-1
25.	Yellow Creek Watershed Authority	51-25-1
27.	Tennessee-Tombigbee Waterway Compact	51-27-1
29.	Drainage Districts with Local Commissioners	51-29-1
31.	Drainage Districts with County Commissioners	51-31-1
33.	Provision Common to Drainage Districts and Swamp Land Districts	51-33-1
35.	Flood Control	51-35-1
37.	Watershed Districts	51-37-1
39.	Storm Water Management Districts	51-39-1
41.	Public Water Authorities	51-41-1

TITLE 53

OIL, GAS, AND OTHER MINERALS

CHAP. No.		BEGINNING SECTION
1.	State Oil and Gas Board	53-1-1
3.	Development, Production and Distribution of Oil and Gas	53-3-1
5.	Geological and Mineral Surve	53-5-1
7.	Surface Mining and Reclamation of Land	53-7-1

9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME TWELVE A

WATER, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL
OIL, GAS AND OTHER MINERALS

§§ 51-1-1 to 53-11-33

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2016 REGULAR LEGISLATIVE SESSION AND 1ST AND 2ND
EXTRAORDINARY SESSIONS

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major byproduct of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams. The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2016 Replacement Volume 12A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume, 1999 Replacement Volume 12, and the 2003 Replacement Volume 12A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2016 Regular and 1st and 2nd Extraordinary Legislative Sessions.

This volume contains the full text of Titles 51 and 53 of the Mississippi Code of 1972 Annotated, as amended through the 2016 Regular and 1st and 2nd Legislative Sessions.

Case annotations are included based on decisions of the state and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

PUBLISHER'S FOREWORD

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E. Water St., Charlottesville, VA 22902-7587.

September 2016 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
— Advance Sheets
— Amendment Notes
— Analyses
— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
— Federal Aspects
— Index
— Joint Legislative Committee Notes
— Judicial Decisions
— Organization and Numbering System
— Placement of Notes
— Replacement Volumes
— Research and Practice References
— Source Notes
— Statute Headings
— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading “Judicial Decisions.” Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called “catchlines.” The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with “In general” first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading “Decisions under former law.”

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

GENERAL OUTLINE OF TITLES AND CHAPTERS

CONSTITUTION OF THE UNITED STATES .... Volume 1
CONSTITUTION OF MISSISSIPPI .... Volume 1

TITLE 1. LAWS AND STATUTES

Beginning Section

CHAPTER 1. Code of 1972 1-1-1
3. Construction of Statutes 1-3-1
5. Session Laws and Journals 1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER 1. State Sovereignty Commission [Repealed] 3-1-1
3. State Boundaries, Holidays, and State Emblems 3-3-1
5. Acquisition of Land by United States Government 3-5-1
7. Compact for a Balanced Budget 3-7-1

TITLE 5. LEGISLATIVE DEPARTMENT

CHAPTER 1. Legislature 5-1-1
3. Legislative Committees 5-3-1
5. Interstate Cooperation 5-5-1
7. Lobbying [Repealed] 5-7-1
8. Lobbying Law Reform Act of 1994 5-8-1
9. Agency Review 5-9-1
11. Abolishment of Agencies 5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

CHAPTER 1. Governor 7-1-1
3. Secretary of State 7-3-1
5. Attorney General 7-5-1
7. State Fiscal Officer; Department of Audit 7-7-1
9. State Treasurer 7-9-1
11. Secretary of State; Land Records 7-11-1
13. Mississippi Administrative Reorganization Act 7-13-1
15. Executive Branch Reorganization Study Commission [Repealed] 7-15-1
17. Mississippi Executive Reorganization Act of 1989 7-17-1

TITLE 9. COURTS

Beginning Section

CHAPTER 1. Provisions Common to Courts 9-1-1
3. Supreme Court 9-3-1
4. Court of Appeals of the State of Mississippi 9-4-1
5. Chancery Courts 9-5-1
7. Circuit Courts 9-7-1
9. County Courts 9-9-1
11. Justice Courts 9-11-1
13. Court Reporters and Court Reporting 9-13-1
15. Judicial Council [Repealed] 9-15-1
17. Court Administrators 9-17-1
19. Commission on Judicial Performance 9-19-1
21. Administrative Office of Courts 9-21-1
23. Drug Courts 9-23-1
25. Veterans Treatment Courts 9-25-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER 1. Practice and Procedure Provisions Common to Courts 11-1-1
3. Practice and Procedure in Supreme Court 11-3-1
5. Practice and Procedure in Chancery Courts 11-5-1
7. Practice and Procedure in Circuit Courts 11-7-1
9. Practice and Procedure in County Courts and Justice Courts 11-9-1
11. Venue of Actions 11-11-1
13. Injunctions 11-13-1
15. Arbitration and Award 11-15-1
17. Suits to Confirm Title or Interest and to Remove Clouds on Title 11-17-1
19. Ejectment 11-19-1
21. Partition of Property 11-21-1
23. Trial of Right of Property 11-23-1
25. Unlawful Entry and Detainer 11-25-1
27. Eminent Domain 11-27-1
29. Sequestration 11-29-1
31. Attachment in Chancery Against Nonresident, Absent or Absconding Debtors 11-31-1
33. Attachment at Law Against Debtors 11-33-1
35. Garnishment 11-35-1
37. Replevin 11-37-1
38. Claim and Delivery 11-38-1
39. Quo Warranto 11-39-1
41. Mandamus; Prohibition 11-41-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

Beginning Section
43. Habeas Corpus 11-43-1
44. Compensation to Victims of Wrongful Conviction and Imprisonment 11-44-1
45. Suits by and Against the State or Its Political Subdivisions 11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees 11-46-1
47. Lis Pendens 11-47-1
49. Rights and Duties of Attorneys, Generally 11-49-1
51. Appeals 11-51-1
53. Costs 11-53-1
55. Litigation Accountability Act of 1988 11-55-1
57. Structured Settlements 11-57-1
59. Uniform Interstate Depositions and Discovery Act 11-59-1
61. Mississippi Religious Freedom Restoration Act 11-61-1
62. Protecting Freedom of Conscience from Government Discrimination Act 11-62-1
63. Application of Foreign Law 11-63-1
65. Enforcement of Federal Laws, Orders, Rules ... 11-65-1
67. Asset Forfeiture Task Force Act 11-67-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

CHAPTER 1. Evidence 13-1-1
3. Process, Notice, and Publication 13-3-1
5. Juries 13-5-1
7. State Grand Jury Act 13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1. Limitation of Actions 15-1-1
3. Prevention of Frauds 15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

CHAPTER 1. Zoning, Planning and Subdivision Regulation .. 17-1-1
2. Building Codes 17-2-1
3. Promotion of Trade, Conventions and Tourism 17-3-1
5. Jails, Waterworks and Other Improvements 17-5-1
7. Removal of Local Governments in Emergencies 17-7-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES (Cont'd)

Beginning Section

9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands 17-9-1
11. Gulf Regional District Law 17-11-1
13. Interlocal Cooperation of Governmental Units 17-13-1
15. Human Resource Agencies 17-15-1
17. Solid Wastes Disposal 17-17-1
18. Mississippi Hazardous Waste Facility Siting Act of 1990 17-18-1
19. Appropriations to Planning and Development Districts 17-19-1
21. Finance and Taxation 17-21-1
23. Rural Fire Truck Acquisition Assistance Programs 17-23-1
25. General Provisions Relating to Counties and Municipalities 17-25-1
27. Municipal Historical Hamlet Act 17-27-1
29. Mississippi Entertainment District Act 17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

Chapter 1. County Boundaries 19-1-1
2. County Government Reorganization Act 19-2-1
3. Board of Supervisors 19-3-1
4. County Administrator 19-4-1
5. Health, Safety and Public Welfare 19-5-1
7. Property and Facilities 19-7-1
9. Finance and Taxation 19-9-1
11. County Budget 19-11-1
13. Contracts, Claims and Transaction of Business with Counties 19-13-1
15. Records and Recording 19-15-1
17. County Auditors 19-17-1
19. Constables 19-19-1
21. Coroners 19-21-1
23. County Attorneys 19-23-1
25. Sheriffs 19-25-1
27. Surveyors and Surveys 19-27-1
29. Local and Regional Railroad Authorities 19-29-1
31. Public Improvement Districts 19-31-1

TITLE 21. MUNICIPALITIES

Chapter 1. Classification, Creation, Abolition, and Expansion 21-1-1

TITLE 21. MUNICIPALITIES (Cont'd)

		Beginning Section
3.	Code Charters	21-3-1
5.	Commission Form of Government	21-5-1
7.	Council Form of Government	21-7-1
8.	Mayor-Council Form of Government	21-8-1
9.	Council-Manager Plan of Government	21-9-1
11.	Municipal Elections [Repealed]	21-11-1
13.	Ordinances	21-13-1
15.	Officers and Records	21-15-1
17.	General Powers	21-17-1
19.	Health, Safety, and Welfare	21-19-1
21.	Police and Police Departments	21-21-1
23.	Municipal Courts	21-23-1
25.	Fire Departments and Fire Districts	21-25-1
27.	Public Utilities and Transportation	21-27-1
29.	Employees' Retirement and Disability Systems	21-29-1
31.	Civil Service	21-31-1
33.	Taxation and Finance	21-33-1
35.	Municipal Budget	21-35-1
37.	Streets, Parks and Other Public Property	21-37-1
38.	Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism	21-38-1
39.	Contracts and Claims	21-39-1
41.	Special Improvements	21-41-1
43.	Business Improvement Districts	21-43-1
45.	Tax Increment Financing	21-45-1
47.	Delta Natural Gas District	21-47-1

TITLE 23. ELECTIONS

CHAPTER	1.	Qualification of Candidates and Registration of Political Parties [Repealed]	23-1-1
	3.	Corrupt Practices [Repealed]	23-3-1
	5.	Registration and Elections [Repealed]	23-5-1
	7.	Voting Machines and Electronic Voting System [Repealed]	23-7-1
	9.	Absentee Ballot [Repealed]	23-9-1
	11.	Presidential Election Law [Repealed]	23-11-1
	13.	Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed]	23-13-1
	15.	Mississippi Election Code	23-15-1
	17.	Amendments to Constitution by Voter Initiative	23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

Beginning Section

CHAPTER 1. Public Officers; General Provisions 25-1-1
3. Salaries and Compensation 25-3-1
4. Ethics in Government 25-4-1
5. Removals From Office 25-5-1
7. Fees 25-7-1
9. Statewide Personnel System 25-9-1
11. Social Security and Public Employees' Retirement and Disability Benefits 25-11-1
13. Highway Safety Patrol Retirement System 25-13-1
14. Government Employees Deferred Compensation Plan Law 25-14-1
15. Group Insurance for Public Employees 25-15-1
17. Cafeteria Fringe Benefit Plans 25-17-1
19. Public Employer-Assisted Housing Program 25-19-1
31. District Attorneys 25-31-1
32. Public Defenders 25-32-1
33. Notaries Public 25-33-1
41. Open Meetings 25-41-1
43. Administrative Procedures 25-43-1.101
45. Permit and Licensing Procedures 25-45-1
51. State Depository for Public Documents 25-51-1
53. Mississippi Department of Information Technology Services (MDITS) 25-53-1
55. Lost Records 25-55-1
57. Destruction of Records [Repealed] 25-57-1
58. Geographic Information System 25-58-1
59. Archives and Records Management 25-59-1
60. Local Government Records 25-60-1
61. Public Access to Public Records 25-61-1
63. Digital Signature Act 25-63-1
65. Agency, University and Community/Junior College Internal Auditing Program 25-65-1

TITLE 27. TAXATION AND FINANCE

CHAPTER 1. Assessors and County Tax Collectors 27-1-1
3. Department of Revenue 27-3-1
4. Board of Tax Appeals 27-4-1
5. Motor Vehicle Comptroller 27-5-1
7. Income Tax and Withholding 27-7-1
8. Mississippi S Corporation Income Tax Act 27-8-1
9. Estate Tax 27-9-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section

10. Uniform Estate Tax Apportionment Act 27-10-1
11. Amusement Tax [Repealed] 27-11-1
13. Corporation Franchise Tax 27-13-1
15. Statewide Privilege Taxes 27-15-1
17. Local Privilege Taxes 27-17-1
19. Motor Vehicle Privilege and Excise Taxes 27-19-1
21. Finance Company Privilege Tax 27-21-1
23. Chain Store Privilege Tax [Repealed] 27-23-1
25. Severance Taxes 27-25-1
27. Vending and Amusement Machine Taxes 27-27-1
29. Ad Valorem Taxes—General Provisions 27-29-1
31. Ad Valorem Taxes—General Exemptions 27-31-1
33. Ad Valorem Taxes—Homestead Exemptions 27-33-1
35. Ad Valorem Taxes—Assessment 27-35-1
37. Ad Valorem Taxes—Payments in Lieu of Taxes 27-37-1
38. Ad Valorem Taxes—Telecommunications Tax Reform 27-38-1
39. Ad Valorem Taxes—State and Local Levies 27-39-1
41. Ad Valorem Taxes—Collection 27-41-1
43. Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors 27-43-1
45. Ad Valorem Taxes—Redemption of Land Sold for Taxes 27-45-1
47. Ad Valorem Taxes—Assignment of Tax Liens .. 27-47-1
49. Ad Valorem Taxes—Insolvencies 27-49-1
51. Ad Valorem Taxes—Motor Vehicles 27-51-1
53. Ad Valorem Taxes—Mobile Homes 27-53-1
55. Gasoline and Motor Fuel Taxes 27-55-1
57. Tax on Oils 27-57-1
59. Liquefied Compressed Gas Tax 27-59-1
61. Interstate Commercial Carriers Motor Fuel Tax 27-61-1
63. Motor Vehicle Fueling Centers [Repealed] 27-63-1
65. Sales Tax 27-65-1
67. Use or Compensating Taxes 27-67-1
68. Uniform Sales and Use Tax Administration Law 27-68-1
69. Tobacco Tax 27-69-1
70. Nonsettling-Manufacturer Cigarette Fee 27-70-1
71. Alcoholic Beverage Taxes 27-71-1
73. Tax Refunds 27-73-1
75. Reciprocal Collection of Taxes 27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the Department of Revenue 27-77-1

TITLE 27. TAXATION AND FINANCE (Cont'd)

Beginning Section

101. Annual Reports by Departments of Government, State-Supported Institutions and Taxing Entities 27-101-1
103. State Budget 27-103-1
104. State Fiscal Affairs 27-104-1
105. Depositories 27-105-1
106. Iran Divestment Act of 2015 27-106-1
107. Disaster Relief 27-107-1
109. Cruise Vessels 27-109-1
111. Payment Credit Vouchers as Credit Against Income and Corporation Franchise Tax Liabilities [Repealed effective July 1, 2018] 27-111-1
113. Facilitating Business Rapid Response to State Declared Disasters Act of 2015 27-113-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

CHAPTER 1. Public Lands 29-1-1
3. Sixteenth Section and Lieu Lands 29-3-1
5. Care of Capitol, Old Capitol, State Office Buildings and Executive Mansion 29-5-1
7. Mineral Leases of State Lands 29-7-1
9. Inventories of State Property 29-9-1
11. Energy Conservation in Public Buildings [Repealed] 29-11-1
13. Flood Insurance for State-Owned Buildings 29-13-1
15. Public Trust Tidelands 29-15-1
17. State Agency Repair and Renovation 29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER 1. General Provisions Relative to Public Contracts 31-1-1
3. State Board of Public Contractors 31-3-1
5. Public Works Contracts 31-5-1
7. Public Purchases 31-7-1
8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts 31-8-1
9. Surplus Property Procurement Commission 31-9-1
11. State Construction Projects 31-11-1
13. Validation of Public Bonds 31-13-1
15. Refunding Bonds 31-15-1
17. State Bonds; Retirement of Bonds 31-17-1
18. Variable Rate Debt Instruments 31-18-1
19. Public Debts 31-19-1

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS (Cont'd)

Beginning Section
21. Registered Bonds 31-21-1
23. Mississippi Private Activity Bonds Allocation Act 31-23-1
25. Mississippi Development Bank Act 31-25-1
27. Mississippi Bond Refinancing Act 31-27-1
29. Institute for Technology Development 31-29-1
31. Mississippi Telecommunications Conference and Training Center 31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER
1. Definitions and General Provisions Relating to the Military Forces 33-1-1
3. Commander in Chief, Military Department, and Governor's Staff 33-3-1
4. Mississippi Military Family Relief Fund 33-4-1
5. The Militia and Mississippi State Guard 33-5-1
7. National Guard 33-7-1
9. Property and Finances 33-9-1
11. Training Facilities 33-11-1
13. Mississippi Code of Military Justice 33-13-1
15. Emergency Management and Civil Defense 33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER
1. State Veterans Affairs Board 35-1-1
3. War Veterans; Miscellaneous Provisions 35-3-1
5. Guardianship of Veterans 35-5-1
7. Veterans' Home Purchase Law 35-7-1
9. Pensions [Repealed] 35-9-1

TITLE 37. EDUCATION

CHAPTER
1. State Board of Education 37-1-1
3. State Department of Education 37-3-1
4. Mississippi Community College Board 37-4-1
5. County Boards of Education and Superintendents 37-5-1
6. Mississippi Uniform School Law 37-6-1
7. School Districts; Boards of Trustees of School Districts 37-7-1
9. District Superintendents, Principals, Teachers, and Other Employees 37-9-1
11. General Provisions Pertaining to Education 37-11-1

TITLE 37. EDUCATION (Cont'd)

Beginning Section
12. Mississippi Student Religious Liberties Act of 2013 37-12-1
13. Curriculum; School Year and Attendance 37-13-1
14. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007 37-14-1
15. Public Schools; Records, Enrollment and Transfer of Pupils 37-15-1
16. Statewide Testing Program 37-16-1
17. Accreditation of Schools 37-17-1
18. Superior-Performing, Exemplary and School At-Risk Schools Programs 37-18-1
19. Teacher Compensation 37-19-1
20. Remedial Education 37-20-1
21. Early Childhood Education 37-21-1
22. State Funds for School Districts 37-22-1
23. Exceptional Children 37-23-1
24. Mississippi Youth Concussion Law 37-24-1
25. Driver Education and Training 37-25-1
26. State Court Education Fund 37-26-1
27. Agricultural High Schools 37-27-1
28. Mississippi Charter Schools Act of 2013 37-28-1
29. Junior Colleges 37-29-1
31. Vocational Education 37-31-1
33. Civilian Vocational Rehabilitation 37-33-1
35. Adult Education 37-35-1
37. Public Schools; Accounting and Auditing 37-37-1
39. Public Schools; Purchases 37-39-1
41. Transportation of Pupils 37-41-1
43. Textbooks 37-43-1
45. State Aid to Public Schools 37-45-1
47. State Aid for Construction of School Facilities 37-47-1
49. Loans to Students 37-49-1
51. Financial Assistance to Children Attending Nonsectarian Private Schools 37-51-1
53. Summer Normals 37-53-1
55. School Libraries 37-55-1
57. Taxation 37-57-1
59. School Bonds and Obligations 37-59-1
61. Expenditure of School Funds; Budgets 37-61-1
63. Educational Television 37-63-1
65. Closing of Public Schools and Institutions of Higher Learning 37-65-1
67. Distance Learning Collaborative Act of 2016 ... 37-67-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
101.	Institutions of Higher Learning; General Provisions	37-101-1
102.	Off-campus Instructional Programs	37-102-1
103.	Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104.	Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105.	Campuses and Streets of State Institutions of Higher Learning	37-105-1
106.	Post-Secondary Education Financial Assistance	37-106-1
107.	Scholarships for Children of Deceased or Disabled Law Enforcement Officers or Firemen [Repealed]	37-107-1
108.	Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1
109.	Medical Education Loans and Scholarships. [Repealed]	37-109-1
110.	Mississippi Public Management Graduate Intern Program	37-110-1
111.	Fraternities, Sororities and Other Societies	37-111-1
113.	Mississippi State University of Agriculture and Applied Science	37-113-1
115.	University of Mississippi	37-115-1
117.	Mississippi University for Women	37-117-1
119.	University of Southern Mississippi	37-119-1
121.	Alcorn State University	37-121-1
123.	Delta State University	37-123-1
125.	Jackson State University	37-125-1
127.	Mississippi Valley State University	37-127-1
129.	Nursing Schools and Scholarships	37-129-1
131.	Teachers Demonstration and Practice Schools	37-131-1
132.	Student Teachers	37-132-1
133.	Technical Institutes	37-133-1
135.	Compacts with Other States	37-135-1
137.	School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138.	Asbestos Abatement Accreditation and Certification Act	37-138-1
139.	Mississippi School for Mathematics and Science	37-139-1
140.	Mississippi School of the Arts	37-140-1
141.	The University Research Center Act of 1988	37-141-1

TITLE 37. EDUCATION (Cont'd)

		Beginning Section
143.	Omnibus Loan or Scholarship Act of 1991	37-143-1
144.	Mississippi Rural Physicians Scholarship Program	37-144-1
145.	Mississippi Opportunity Loan Program Act	37-145-1
146.	Mississippi Rural Dentists Scholarship Program	37-146-1
147.	Mississippi University Research Authority Act	37-147-1
148.	Strengthening Mississippi Academic Research Through Business Act	37-148-1
149.	Mississippi Teacher Center	37-149-1
151.	Mississippi Accountability and Adequate Education Program Act of 1997	37-151-1
152.	Commission on Restructuring the Mississippi Adequate Education Program (MAEP)	37-152-1
153.	Workforce Training and Education Consolidation Act	37-153-1
154.	State Longitudinal Data System	37-154-1
155.	College Savings Plans of Mississippi	37-155-1
157.	Student Tuition Assistance	37-157-1
159.	Mississippi Teacher Scholarship Programs	37-159-1
160.	Teach for America Act	37-160-1
161.	Mississippi Education Reform Act of 2006	37-161-1
163.	Education Achievement Council	37-163-1
165.	Conversion Charter School Act of 2010	37-165-1
167.	New Start School Program	37-167-1
169.	Mississippi Autism Advisory Committee	37-169-1
171.	Use of School Property by Public for Recreation and Sports	37-171-1
173.	Dyslexia Therapy Scholarship for Students with Dyslexia Program	37-173-1
175.	Mississippi Speech-Language Therapy Scholarship for Students with Speech-Language Impairments Program	37-175-1
177.	Literacy-Based Promotion Act	37-177-1
179.	Districts of Innovation	37-179-1
181.	Equal Opportunity for Students with Special Needs Act	37-181-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

CHAPTER	1.	State Law Library; Legislative Reference Bureau	39-1-1
	3.	Libraries and Library Commission	39-3-1
	5.	Archives and History	39-5-1

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY (Cont'd)

Beginning Section
7. Antiquities 39-7-1
9. Trusts to Promote Arts and Sciences 39-9-1
11. Mississippi Arts Commission 39-11-1
13. Historic Preservation Districts and Landmarks 39-13-1
15. Municipal and County Funds to Support the Arts 39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum 39-17-1
19. Museum Unclaimed Property Act 39-19-1
21. Mississippi Craft Center 39-21-1
23. Mississippi Children's Museum 39-23-1
25. Mississippi Arts and Entertainment Center 39-25-1
27. Mississippi Blues Commission 39-27-1
29. Mississippi Commission on the Holocaust 39-29-1
31. Mississippi Bicentennial Celebration Commission [Repealed effective July 1, 2019] 39-31-1
32. Mississippi Country and Western Music Commission 39-32-1
33. Mississippi Country Music Trail 39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission 39-35-1
37. Mississippi Heritage, History and Culture Trail Program 39-37-1
39. Mississippi Civil Rights Museum Advisory Commission 39-39-1

TITLE 41. PUBLIC HEALTH

Chapter 1. Mississippi Department of Public Health [Repealed] 41-1-1
3. State Board of Health; Local Health Boards and Officers 41-3-1
4. Department of Mental Health 41-4-1
5. Governing Authorities for State Hospitals and Institutions 41-5-1
7. Hospital and Health Care Commissions 41-7-1
9. Regulation of Hospitals; Hospital Records 41-9-1
10. Medical Records 41-10-1
11. State Charity Hospitals; Mississippi Children's Rehabilitation Center 41-11-1
13. Community Hospitals 41-13-1
15. Department for the Prevention of Insanity [Repealed] 41-15-1
17. State Mental Institutions 41-17-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
19.	Facilities and Services for Individuals with an Intellectual Disability or Mental Illness	41-19-1
21.	Individuals with Mental Illness or an Intellectual Disability	41-21-1
22.	Hemophilia	41-22-1
23.	Contagious and Infectious Diseases; Quarantine	41-23-1
24.	Sickle Cell Testing Program	41-24-1
25.	Disinfection and Sanitation of Buildings and Premises	41-25-1
26.	Mississippi Safe Drinking Water Act of 1997	41-26-1
27.	Mosquito Control	41-27-1
28.	Diabetes	41-28-1
29.	Poisons, Drugs and Other Controlled Substances	41-29-1
30.	Alcoholism and Alcohol Abuse Prevention, Control and Treatment	41-30-1
31.	Commitment of Alcoholics and Drug Addicts for Treatment	41-31-1
32.	Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities	41-32-1
33.	Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium	41-33-1
34.	Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV	41-34-1
35.	Eye Inflammation of Young	41-35-1
36.	Determination of Death	41-36-1
37.	Autopsies	41-37-1
39.	Disposition of Human Bodies or Parts	41-39-1
41.	Surgical or Medical Procedures; Consents	41-41-1
42.	Family Planning	41-42-1
43.	Cemeteries and Burial Grounds	41-43-1
45.	Sexual Sterilization [Repealed]	41-45-1
47.	Transportation and Possession of Parakeets and Other Birds [Repealed]	41-47-1
49.	Regulation of Hotels and Innkeepers	41-49-1
51.	Animal and Poultry By-Products Disposal or Rendering Plants	41-51-1
53.	Rabies Control in Dogs and Cats	41-53-1
55.	Public Ambulance Service	41-55-1
57.	Vital Statistics	41-57-1
58.	Medical Radiation Technology	41-58-1
59.	Emergency Medical Services	41-59-1
60.	Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator	41-60-1

TITLE 41. PUBLIC HEALTH (Cont'd)

		Beginning Section
61.	State Medical Examiner	41-61-1
63.	Evaluation and Review of Professional Health Services Providers	41-63-1
65.	[Reserved]	
67.	Mississippi Individual On-Site Wastewater Disposal System Law	41-67-1
69.	[Reserved]	
71.	Home Health Agencies	41-71-1
73.	Hospital Equipment and Facilities Authority Act	41-73-1
75.	Ambulatory Surgical Facilities	41-75-1
77.	Licensing of Birthing Centers	41-77-1
79.	Health Problems of School Children	41-79-1
81.	Perinatal Health Care	41-81-1
83.	Utilization Review of Availability of Hospital Resources and Medical Services	41-83-1
85.	Mississippi Hospice Law of 1995	41-85-1
86.	Mississippi Children's Health Care Insurance Program Act	41-86-1
87.	Early Intervention Act for Infants and Toddlers	41-87-1
88.	Mississippi Child Immunization Act of 1994	41-88-1
89.	Infant Mortality Reduction	41-89-1
90.	Hearing Impairment of Infants and Toddlers	41-90-1
91.	Central Cancer Registry	41-91-1
93.	Osteoporosis Prevention and Treatment Education Act	41-93-1
95.	Mississippi Health Policy Act of 1994	41-95-1
97.	State Employee Wellness and Physical Fitness Programs	41-97-1
99.	Qualified Health Center Grant Program	41-99-1
101.	Mississippi Council on Obesity Prevention and Management	41-101-1
103.	Task Force on Heart Disease and Stroke Prevention	41-103-1
105.	Healthcare Coordinating Council	41-105-1
107.	Health Care Rights of Conscience	41-107-1
109.	Leonard Morris Chronic Kidney Disease Leadership Task Force	41-109-1
111.	Child Death Review Panel	41-111-1
113.	Tobacco Education, Prevention and Cessation Program	41-113-1
114.	Restrictions on Tobacco Use in Public Facilities	41-114-1
115.	Tanning Facilities	41-115-1
117.	Nurse-Family Partnership Pilot Program	41-117-1

TITLE 41. PUBLIC HEALTH (Cont'd)

Beginning Section

119. Health Information Technology Act 41-119-1
121. Requirements for Advertisements for Health Care Services 41-121-1
123. Office of Mississippi Physician Workforce 41-123-1
125. Prescribed Pediatric Extended Care Centers (PPEC) 41-125-1
127. Telemedicine Services 41-127-1
129. Umbilical Cord Blood Banking Program Act 41-129-1
131. Right to Try Act 41-131-1
133. Lay Caregivers for Hospital Patients 41-133-1
135. Support and Promotion of Breast-Feeding in Mississippi 41-135-1

TITLE 43. PUBLIC WELFARE

CHAPTER 1. Department of Human Services and County Departments of Public Welfare 43-1-1
3. Blind Persons 43-3-1
5. Schools for the Blind and Deaf 43-5-1
6. Rights and Liabilities of Persons with Disabilities 43-6-1
7. Council on Aging 43-7-1
9. Old Age Assistance 43-9-1
11. Institutions for the Aged or Infirm 43-11-1
13. Medical Assistance for the Aged; Medicaid 43-13-1
14. Mississippi Statewide System of Care for Children and Youth 43-14-1
15. Child Welfare 43-15-1
16. Child Residential Home Notification Act 43-16-1
17. Temporary Assistance to Needy Families 43-17-1
18. Interstate Compact on the Placement of Children 43-18-1
19. Support of Natural Children 43-19-1
20. Child Care Facilities 43-20-1
21. Youth Court 43-21-1
23. Family Courts [Repealed] 43-23-1
24. State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed] 43-24-1
25. Interstate Compacts Relating to Juveniles 43-25-1
26. Department of Child Protection Services 43-26-1
27. Department of Youth Services 43-27-1
29. Persons with Disabilities 43-29-1

TITLE 43. PUBLIC WELFARE (Cont'd)

Beginning Section

30. Mississippi Disability Resource Commission 43-30-1
31. Poor Persons 43-31-1
33. Housing and Housing Authorities 43-33-1
35. Urban Renewal and Redevelopment 43-35-1
37. Acquisition of Real Property Using Public Funds 43-37-1
39. Relocation Assistance 43-39-1
41. Emergency and Disaster Assistance [Repealed] 43-41-1
43. Administration of Social Security Funds 43-43-1
45. Adult Protective Services [Repealed] 43-45-1
47. Mississippi Vulnerable Persons Act 43-47-1
49. Mississippi Welfare Restructuring Program Act of 1993 [Repealed] 43-49-1
51. Family Preservation Act of 1994 43-51-1
53. Mississippi Leadership Council on Aging 43-53-1
55. Mississippi Commission for National and Community Service 43-55-1
57. Comprehensive Plan for Provision of Services to Disabled Persons [Repealed] ....
59. Mississippi Commission on the Status of Women 43-59-1
61. Mississippi Seniors and Indigents Rx Program 43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

Chapter

1. Department of Public Safety 45-1-1
2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds ... 45-2-1
3. Highway Safety Patrol 45-3-1
4. County Jail Officers Training Program 45-4-1
5. Law Enforcement Officers' Training Academy .. 45-5-1
6. Law Enforcement Officers Training Program ... 45-6-1
7. County Patrol Officers 45-7-1
9. Weapons 45-9-1
10. Novelty Lighters 45-10-1
11. Fire Protection Regulations, Fire Protection and Safety in Buildings 45-11-1
12. Mississippi Fire Safety Standard and Firefighter Protection Act [For contingent repeal of this chapter, see § 45-12-21] 45-12-1
13. Fireworks and Explosives 45-13-1
14. Radiation Protection Program 45-14-1
15. High Voltage Power Lines 45-15-1
17. Civil Emergencies 45-17-1
18. Emergency Management Assistance Compact .. 45-18-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER (Cont'd)

Beginning Section
19. Subversive Groups and Subversive Activities ... 45-19-51
21. Rock Festivals ... 45-21-1
23. Boiler and Pressure Vessel Safety ... 45-23-1
25. Identification Cards for Non-Drivers. [Repealed] 45-25-1
27. Mississippi Justice Information Center ... 45-27-1
29. Records ... 45-29-1
31. Sex Offense Criminal History Record Information Act ... 45-31-1
33. Registration of Sex Offenders ... 45-33-1
35. Identification Cards ... 45-35-1
37. Prevention of Youth Access to Tobacco Act ... 45-37-1
39. Statewide Crime Stoppers Advisory Council ... 45-39-1
41. Mississippi Silver Alert System ... 45-41-1
43. William Lee Montjoy Pool Safety Act ... 45-43-1
45. Mississippi Conveyance Safety Act ... 45-45-1
47. DNA Data Bank ... 45-47-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER 1. County and Municipal Prisons and Prisoners .. 47-1-1
3. Removal of Prisoners ... 47-3-1
4. Privately Operated Correctional Facilities ... 47-4-1
5. Correctional System ... 47-5-1
7. Probation and Parole ... 47-7-1

TITLE 49. CONSERVATION AND ECOLOGY

CHAPTER 1. General Provisions ... 49-1-1
2. Department of Environmental Quality ... 49-2-1
3. Fisheries and Wildlife Research ... 49-3-1
4. Mississippi Department of Wildlife, Fisheries and Parks ... 49-4-1
5. Fish, Game and Bird Protection and Refuges ... 49-5-1
6. Motor Vehicle and Boat Replacement Program 49-6-1
7. Hunting and Fishing ... 49-7-1
8. Importation, Sale and Possession of Inherently Dangerous Wild Animals ... 49-8-1
9. Mussels ... 49-9-1
10. Wildlife Violator Compact ... 49-10-1
11. Private Shooting Preserves ... 49-11-1
13. Commercial Quail ... 49-13-1
15. Seafood ... 49-15-1
17. Pollution of Waters, Streams, and Air ... 49-17-1

TITLE 49. CONSERVATION AND ECOLOGY (Cont'd)

Beginning Section

18. Mississippi Liability of Persons Responding to Oil Spills Act 49-18-1
19. Forests and Forest Protection 49-19-1
20. Mississippi River Timberlands Control Act [Repealed] 49-20-1
21. Interstate Environmental Compact 49-21-1
23. Outdoor Advertising 49-23-1
25. Junkyards 49-25-1
26. Channel Maintenance Act 49-26-1
27. Coastal Wetlands Protection Act 49-27-1
28. Shoreline and Beach Preservation Districts 49-28-1
29. Environmental Protection Council [Repealed] 49-29-1
31. Mississippi Multimedia Pollution Prevention Act 49-31-1
33. Mississippi Agricultural and Forestry Activity Act 49-33-1
35. Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List 49-35-1
37. Statewide Scientific Information Management 49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER 1. Navigable Waters 51-1-1
2. Mississippi Marine Litter Act 51-2-1
3. Water Resources; Regulation and Control 51-3-1
4. Mississippi Scenic Streams Stewardship Act 51-4-1
5. Subsurface Waters; Well Drillers 51-5-1
7. Water Management Districts 51-7-1
8. Joint Water Management Districts 51-8-1
9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act 51-9-1
11. Pearl River Basin Development District 51-11-1
13. Tombigbee Valley Authority and Water Management District 51-13-1
15. Pat Harrison Waterway Commission and District 51-15-1
17. Big Black River Basin District 51-17-1
19. West Central Mississippi Waterway Commission [Repealed] 51-19-1
21. Lower Mississippi River Basin Development District [Repealed] 51-21-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL (Cont'd)

Beginning Section
23. Lower Yazoo River Basin District. [Repealed] .. 51-23-1
25. Yellow Creek Watershed Authority 51-25-1
27. Tennessee-Tombigbee Waterway Compact 51-27-1
29. Drainage Districts with Local Commissioners 51-29-1
31. Drainage Districts with County Commissioners 51-31-1
33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
35. Flood Control 51-35-1
37. Watershed Districts 51-37-1
39. Storm Water Management Districts 51-39-1
41. Public Water Authorities 51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

Chapter 1. State Oil and Gas Board 53-1-1
3. Development, Production and Distribution of Gas and Oil 53-3-1
5. Geological and Mineral Survey 53-5-1
7. Surface Mining and Reclamation of Land 53-7-1
9. Surface Coal Mining and Reclamation of Land 53-9-1
10. Interstate Mining Compact 53-10-1
11. Mississippi Geologic Sequestration of Carbon Dioxide Act 53-11-1

TITLE 55. PARKS AND RECREATION

Chapter 1. Mississippi Recreational Advisory Council [Repealed] 55-1-1
3. State Parks and Forests 55-3-1
5. Federal Parks and National Parkways 55-5-1
7. Bridge and Park Commissions 55-7-1
9. County and Municipal Facilities 55-9-1
11. Harrison County Parkway 55-11-1
13. Natchez Trace Parkway 55-13-1
15. Commemorative Parks and Monuments 55-15-1
17. International Gardens of Mississippi 55-17-1
19. Bienville Recreational District 55-19-1
21. Mississippi Zoological Park and Garden Districts 55-21-1
23. Mississippi Veterans Memorial Stadium 55-23-1
24. Mississippi Coast Coliseum Commission 55-24-1
25. Rails-to-Trails Recreational District 55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

			Beginning Section
CHAPTER	1.	Mississippi Development Authority	57-1-1
	3.	Agriculture and Industry Program	57-3-1
	4.	Industrial Development Fund	57-4-1
	5.	Industrial Parks and Districts	57-5-1
	7.	Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes	57-7-1
	9.	Industrial Plant Training	57-9-1
	10.	Small Business Assistance	57-10-1
	11.	Market and Industrial Studies and Research	57-11-1
	13.	Research and Development Center	57-13-1
	15.	Marine Resources	57-15-1
	17.	Forest Products Utilization Laboratory [Repealed]	57-17-1
	18.	Renewable Natural Resources Research Act of 1994	57-18-1
	19.	Food Technology Laboratory	57-19-1
	21.	State Chemical Laboratory	57-21-1
	23.	Pharmaceutical Product Development and Utilization	57-23-1
	25.	Southern States Energy Compact	57-25-1
	26.	Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attractions, etc.	57-26-1
	27.	Regional Tourist Promotion Councils	57-27-1
	28.	Tourism Project Incentive Program; Entertainment Districts, etc.	57-28-1
	29.	Travel and Tourism	57-29-1
	30.	Family-Oriented Enterprises	57-30-1
	31.	County Industrial Development Authorities	57-31-1
	32.	Southeast Mississippi Industrial Council	57-32-1
	33.	Southern Growth Policies Agreement	57-33-1
	34.	Alabama-Mississippi Joint Economic Development Authority	57-34-1
	35.	Tennessee River Valley Association	57-35-1
	36.	Chickasaw Trail Economic Development Compact [Repealed]	57-36-1
	37.	Transportation Planning Council [Repealed]	57-37-1
	39.	Energy and Transportation Planning	57-39-1
	40.	Energy Infrastructure Revolving Loan Program	57-40-1
	41.	Financing Industrial Enterprise Projects	57-41-1
	43.	Railroad Revitalization	57-43-1
	44.	Local Governments Freight Rail Service Projects	57-44-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

		Beginning Section
45.	Mississippi-Louisiana-Alabama Rapid Rail Transit Compact	57-45-1
46.	Mississippi Railroad Improvements Fund	57-46-1
47.	Southeast Interstate Low-Level Radioactive Waste Management Compact	57-47-1
49.	Nuclear Waste Storage and Disposal	57-49-1
51.	Enterprise Zones [Repealed]	57-51-1
53.	Corporate Headquarters Incentive Program [Repealed]	57-53-1
54.	Advanced Technology Initiative [Repealed]	57-54-1
55.	Universities Research Institutes	57-55-1
56.	Mississippi Technology Transfer Office	57-56-1
57.	Export Trade Development	57-57-1
59.	Mississippi Capital Companies [Repealed]	57-59-1
61.	Mississippi Business Investment Act	57-61-1
62.	Mississippi Advantage Jobs Act	57-62-1
63.	Statewide Economic Development and Planning Act	57-63-1
64.	Regional Economic Development	57-64-1
65.	Mississippi International Trade Institute	57-65-1
67.	Mississippi Superconducting Super Collider Act	57-67-1
69.	Mississippi Minority Business Enterprise Act	57-69-1
71.	Mississippi Small Enterprise Development Finance Act	57-71-1
73.	Economic Development Reform Act	57-73-1
75.	Mississippi Major Economic Impact Act	57-75-1
77.	Venture Capital Act of 1994	57-77-1
79.	Mississippi Small Town Development Act	57-79-1
80.	Growth and Prosperity Act	57-80-1
81.	Mississippi Science and Technology Commission [Repealed]	57-81-1
83.	Mississippi Technology, Inc. Liaison Committee	57-83-1
85.	Mississippi Rural Impact Act	57-85-1
87.	Mississippi Broadband Technology Development Act	57-87-1
89.	Mississippi Motion Picture Incentive Act	57-89-1
91.	Economic Redevelopment Act	57-91-1
93.	Mississippi Existing Industry Productivity Loan Program	57-93-1
95.	Mississippi Job Protection Act	57-95-1
97.	Mississippi Delta Revitalization Act of 2006	57-97-1
99.	Mississippi Major Economic Impact Withholding Rebate Incentive Program	57-99-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

Beginning Section

100. Existing Industry Withholding Rebate Incentive Program 57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Rebate Program 57-101-1
103. Technology Based Business Capital Assistance Programs 57-103-1
105. Qualified Equity Investment Tax Credits and Public Entity Financing Arrangements 57-105-1
107. Mississippi Workforce Training Projects 57-107-1
111. Mississippi Small Business and Existing Forestry Industry Enterprise Participating Loan Program 57-111-1
113. Business Enterprise Tax Exemptions 57-113-1
115. Mississippi Small Business Investment Company Act 57-115-1
117. Mississippi Health Care Industry Zone Act [Repealed effective July 1, 2022] 57-117-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

Chapter 1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage 59-1-1
3. Ports of Entry 59-3-1
5. State Ports and Harbors 59-5-1
6. Compact for Development of Deep Draft Harbor and Terminal 59-6-1
7. County and Municipal Harbors 59-7-1
9. County Port Authority or Development Commission 59-9-1
11. County Port and Harbor Commission 59-11-1
13. Harbor Improvements by Coast Counties 59-13-1
15. Small Craft Harbors 59-15-1
17. State Inland Ports 59-17-1
19. Landings 59-19-1
21. Boats and Other Vessels 59-21-1
23. Alcohol Boating Safety Act 59-23-1
25. Certificates of Title for Boats and Other Vessels 59-25-1

TITLE 61. AVIATION

Chapter 1. Transportation Commission 61-1-1
3. Airport Authorities 61-3-1
4. Mississippi Wayport Authority Act 61-4-1

TITLE 61. AVIATION (Cont'd)

			Beginning Section
	5.	Acquisition, Disposition and Support of Airport Facilities	61-5-1
	7.	Airport Zoning	61-7-1
	9.	Incorporation of Airport Into Corporate Boundaries of Municipality	61-9-1
	11.	Operation of Aircraft; Certification and Licensing of Pilots and Aircraft	61-11-1
	13.	Aircraft for Use of Governor, State Departments and Agencies	61-13-1
	15.	Registration of Aircraft	61-15-1
	17.	Concealing or Misrepresenting Aircraft Identification Number; Non-Conforming Aircraft Fuel Containers	61-17-1
	19.	Aviation Hazards	61-19-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

Chapter	1.	Driver's License	63-1-1
	2.	Mandatory Use of Safety Seat Belts	63-2-1
	3.	Traffic Regulations and Rules of the Road	63-3-1
	5.	Size, Weight and Load	63-5-1
	7.	Equipment and Identification	63-7-1
	9.	Traffic Violations Procedure	63-9-1
	10.	Nonresident Traffic Violator Compact	63-10-1
	11.	Implied Consent Law	63-11-1
	13.	Inspection of Motor Vehicles	63-13-1
	15.	Motor Vehicle Safety — Responsibility	63-15-1
	16.	Public Safety Verification and Enforcement Act [Repealed effective July 1, 2018]	63-16-1
	17.	Manufacture, Sales and Distribution	63-17-1
	19.	Motor Vehicle Sales Finance Law	63-19-1
	21.	Motor Vehicle Titles	63-21-1
	23.	Abandoned Motor Vehicles	63-23-1
	25.	Motor Vehicle Chop Shop, Stolen and Altered Property Act	63-25-1
	27.	Disclosure of Use of Nonoriginal Replacement Parts	63-27-1
	29.	Mississippi Vehicle Protection Product Act	63-29-1
	31.	Operating Off-Road Vehicles	63-31-1
	33.	Miscellaneous Provisions	63-33-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

Chapter	1.	Transportation Department	65-1-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES (Cont'd)

Beginning Section
2. State Transportation Arbitration Board 65-2-1
3. State Highway System 65-3-1
4. Economic Development Highway Act 65-4-1
5. Controlled Access Facilities 65-5-1
7. Public Roads and Streets; Private Way 65-7-1
9. State Aid Roads in Counties 65-9-1
10. County Major Feeder Road System [Repealed] 65-10-1
11. County Highway Aid 65-11-1
13. Highway and Street Revenue Bond Authority 65-13-1
15. County Funds for Roads and Bridges 65-15-1
17. County Road Officials 65-17-1
18. Local System Road Program 65-18-1
19. Separate Road Districts 65-19-1
21. Bridges; General Provisions 65-21-1
23. Bridges; Boundary and Other Waters 65-23-1
25. Mississippi River Bridges 65-25-1
26. Tennessee-Tombigbee Waterway Bridges 65-26-1
27. Ferries; General Provisions 65-27-1
29. Ferries in Certain Counties 65-29-1
31. Hospitality Stations on Highways 65-31-1
33. Sea Walls 65-33-1
37. Local System Bridge Replacement and Rehabilitation Program 65-37-1
39. Gaming Counties Bond Sinking Fund 65-39-1
41. Mississippi Scenic Byways 65-41-1
43. Toll Roads and Toll Bridges 65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER 1. Local Option Alcoholic Beverage Control 67-1-1
3. Sale of Light Wine, Beer, and Other Alcoholic Beverages 67-3-1
5. Native Wines 67-5-1
7. Beer Industry Fair Dealing Act 67-7-1
9. Possession or Transportation of Alcoholic Beverages, Light Wine, or Beer 67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER 1. Agriculture and Commerce Department; Council on Agriculture 69-1-1
2. Mississippi Farm Reform Act 69-2-1
3. Agricultural Seeds 69-3-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

		Beginning Section
5.	Fairs; Stock Shows; Improvement of Livestock	69-5-1
7.	Markets and Marketing; Domestic Fish Farming	69-7-1
8.	Beef Promotion And Research Program	
9.	Soybean Promotion Board	69-9-1
10.	Rice Promotion Board	69-10-1
11.	Swine	69-11-1
13.	Stock Laws, Estrays	69-13-1
15.	Board of Animal Health; Livestock and Animal Diseases	69-15-1
17.	Livestock Biologics, Drugs and Vaccines	69-17-1
19.	Regulation of Professional Services	69-19-1
21.	Crop Spraying and Licensing of Aerial Applicators	69-21-1
23.	Mississippi Pesticide Law	69-23-1
24.	Fertilizing Materials and Additives	69-24-1
25.	Plants, Plant and Bee Diseases	69-25-1
26.	Pest Control Compact	69-26-1
27.	Soil Conservation	69-27-1
28.	Protection and Conservation of Agricultural Lands	69-28-1
29.	Livestock Brands, Theft or Loss of Livestock and Protective Associations	69-29-1
31.	Regulation of Moisture-Measuring Devices	69-31-1
33.	Pecan Harvesting	69-33-1
34.	Milk Producers Transportation Cost Assistance Loan Program	69-34-1
35.	Mississippi Dairy Promotion Act	69-35-1
36.	Southern Dairy Compact	69-36-1
37.	Mississippi Boll Weevil Management Act	69-37-1
39.	Agricultural Liming Materials	69-39-1
41.	Mississippi Agribusiness Council Act of 1993	69-41-1
42.	Program to Encourage Growth in Mississippi Agribusiness Industry	69-42-1
43.	Mississippi Ratite Council and Promotion Board	69-43-1
44.	Mississippi Corn Promotion Board	69-44-1
45.	Mississippi Agricultural Promotions Program Act	69-45-1
46.	Mississippi Land, Water and Timber Resources Act	69-46-1
47.	Organic Certification Program	69-47-1
48.	Peanut Promotion Board	69-48-1
49.	Field Crop Products	69-49-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

Beginning Section

51. Ethanol, Anhydrous Alcohol and Wet Alcohol ... 69-51-1
53. Agritourism [Repealed effective July 1, 2018] .. 69-53-1

TITLE 71. LABOR AND INDUSTRY

CHAPTER
1. Employer and Employee 71-1-1
3. Workers' Compensation 71-3-1
5. Unemployment Compensation 71-5-1
7. Drug and Alcohol Testing of Employees 71-7-1
9. Medical Savings Account Act 71-9-1
11. Employment Protection Act 71-11-1
13. Prohibition Against Employer Intimidation Act 71-13-1
15. Mississippi Employment Fairness Act 71-15-1

TITLE 73. PROFESSIONS AND VOCATIONS

CHAPTER
1. Architects 73-1-1
2. Landscape Architectural Practice 73-2-1
3. Attorneys at Law 73-3-1
4. Auctioneers 73-4-1
5. Barbers 73-5-1
6. Chiropractors 73-6-1
7. Cosmetologists 73-7-1
9. Dentists 73-9-1
10. Dietitians 73-10-1
11. Practice of Funeral Service and Funeral Directing 73-11-1
13. Engineers and Land Surveyors 73-13-1
14. Hearing Aid Dealers 73-14-1
15. Nurses 73-15-1
17. Nursing Home Administrators 73-17-1
19. Optometry and Optometrists 73-19-1
21. Pharmacists 73-21-1
22. Orthotics and Prosthetics 73-22-1
23. Physical Therapists 73-23-1
24. Mississippi Occupational Therapy Practice Act 73-24-1
25. Physicians 73-25-1
26. Physician Assistants 73-26-1
27. Podiatrists 73-27-1
29. Polygraph Examiners 73-29-1
30. Licensed Professional Counselors 73-30-1
31. Psychologists 73-31-1
33. Public Accountants 73-33-1

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

Beginning Section
34. Real Estate Appraisers 73-34-1
35. Real Estate Brokers 73-35-1
36. Registered Foresters 73-36-1
37. Sanitarians 73-37-1
38. Speech Pathologists and Audiologists 73-38-1
39. Veterinarians 73-39-1
41. Athlete Agents [Repealed] 73-41-1
42. Uniform Athlete Agents Law 73-42-1
43. State Board of Medical Licensure 73-43-1
45. Information to Be Included in Prescriptions 73-45-1
47. [Reserved] ....
49. Health Care Provider Licensing Boards 73-49-1
50. Licensing, Certifying or Registering Military-trained Individuals or Spouses to Lawfully Practice Occupation 73-50-1
51. Unlicensed Practice of Profession 73-51-1
52. Licensure Records 73-52-1
53. Licensing and Regulation of Social Workers 73-53-1
54. Marriage and Family Therapists 73-54-1
55. Mississippi Athletic Trainers Licensure Act 73-55-1
57. Mississippi Respiratory Care Practice Act 73-57-1
59. Residential Builders and Remodelers 73-59-1
60. Home Inspectors 73-60-1
61. Tattooing and Body Piercing 73-61-1
63. Registered Professional Geologists Practice Act 73-63-1
65. Professional Art Therapists 73-65-1
67. Professional Massage Therapists 73-67-1
69. Mississippi Electronic Protection Licensing Act 73-69-1
71. Acupuncture Practice Act 73-71-1
73. Mississippi Certified Interior Designer Act 73-73-1
75. Licensed Behavior Analysts 73-75-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 1. Uniform Commercial Code — Revised Article 1. General Provisions 75-1-101
2. Uniform Commercial Code — Sales 75-2-101
2A. Uniform Commercial Code — Leases 75-2A-101
3. Uniform Commercial Code — Negotiable Instruments 75-3-101
4. Uniform Commercial Code — Bank Deposits and Collections 75-4-101

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

		Beginning Section
4A.	Uniform Commercial Code — Funds Transfers	75-4A-101
5.	Uniform Commercial Code — Revised Article 5. Letters of Credit	75-5-101
6.	Uniform Commercial Code — Bulk Transfers	75-6-101
7.	Uniform Commercial Code — Documents of Title	75-7-101
8.	Uniform Commercial Code — Revised Article 8. Investment Securities	75-8-101
9.	Uniform Commercial Code — Secured Transactions	75-9-101
10.	Uniform Commercial Code — Effective Date and Repealer	75-10-101
11.	Uniform Commercial Code — Effective Date and Transition Provisions: 1977 Amendments	75-11-101
12.	Uniform Electronic Transactions Act	75-12-1
13.	Bills, Notes and Other Writings	75-13-1
15.	Mississippi Money Transmitters Act	75-15-1
17.	Interest, Finance Charges, and Other Charges	75-17-1
18.	Revolving Charge Agreements; Credit Cards [Repealed]	75-18-1
19.	Seals	75-19-1
21.	Trusts and Combines in Restraint or Hindrance of Trade	75-21-1
23.	Fair Trade Laws	75-23-1
24.	Regulation of Business for Consumer Protection	75-24-1
25.	Registration of Trademarks and Labels	75-25-1
26.	Mississippi Uniform Trade Secrets Act	75-26-1
27.	Weights and Measures	75-27-1
29.	Sale and Inspection of Food and Drugs	75-29-1
31.	Milk and Milk Products	75-31-1
33.	Meat, Meat-Food and Poultry Regulation and Inspection	75-33-1
35.	Meat Inspection	75-35-1
37.	Operation of Frozen Food Locker Plants [Repealed]	75-37-1
39.	Sale of Baby Chicks	75-39-1
40.	Importation and Sale of Animals or Birds	75-40-1
41.	Gins	75-41-1
43.	Farm Warehouses	75-43-1
44.	Grain Warehouses	75-44-1
45.	Commercial Feeds and Grains	75-45-1
47.	Commercial Fertilizers	75-47-1
49.	Factory-Built Homes	75-49-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

Beginning Section
51. Water Heaters 75-51-1
53. Paints, Varnishes and Similar Materials 75-53-1
55. Gasoline and Petroleum Products 75-55-1
56. Antifreeze and Summer Coolants 75-56-1
57. Liquefied Petroleum Gases 75-57-1
58. Mississippi Natural Gas Marketing Act 75-58-1
59. Correspondence Courses 75-59-1
60. Proprietary Schools and Colleges 75-60-1
61. Manufacture and Sale of Jewelry and Optical Equipment 75-61-1
63. Sales of Cemetery Merchandise and Funeral Services 75-63-1
65. Going Out of Business Sales; Unsolicited Goods 75-65-1
66. Home Solicitation Sales 75-66-1
67. Loans 75-67-1
69. Farm Loan Bonds 75-69-1
71. Mississippi Securities Act of 2010 75-71-101
72. Business Takeovers 75-72-1
73. Hotels and Innkeepers 75-73-1
74. Youth Camps 75-74-1
75. Amusements, Exhibitions and Athletic Events 75-75-1
76. Mississippi Gaming Control Act 75-76-1
77. Repurchase of Inventories From Retailers Upon Termination of Contract 75-77-1
79. Pulpwood Scaling and Practices 75-79-1
81. Dance Studio Lessons 75-81-101
83. Health Spas 75-83-1
85. Transient Vendor 75-85-1
87. Contracts Between Out-of-State Principals and Commissioned Sales Representatives 75-87-1
89. Mississippi Commodities Enforcement Act 75-89-1
91. Truth in Music Advertising 75-91-1
93. Fictitious Business Name Registration Act 75-93-1
95. Business of Purchasing Precious Items for Resale 75-95-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

Chapter 1. Public Service Commission 77-1-1
2. Public Utilities Staff 77-2-1
3. Regulation of Public Utilities 77-3-1
5. Electric Power 77-5-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS (Cont'd)

		Beginning Section
6.	Municipal Gas Authority of Mississippi Law	77-6-1
7.	Motor Carriers	77-7-1
8.	Transportation Network Companies	77-8-1
9.	Railroads and Other Common Carriers	77-9-1
11.	Gas Pipelines and Distribution Systems	77-11-1
13.	Regulation of Excavations Near Underground Utility Facilities	77-13-1
15.	Local Natural Gas Districts	77-15-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

CHAPTER	1.	General Provisions Relative to Corporations	79-1-1
	3.	Business Corporations [Repealed]	79-3-1
	4.	Mississippi Business Corporation Act	79-4-1.01
	5.	Business Development Corporations [Repealed]	79-5-1
	6.	Foreign Limited Liability Companies [Repealed]	79-6-1
	7.	Small Business Investment Companies	79-7-1
	9.	Professional Corporations [Repealed]	79-9-1
	10.	Mississippi Professional Corporation Act	79-10-1
	11.	Nonprofit, Nonshare Corporations and Religious Societies	79-11-1
	12.	Partnerships [Repealed]	79-12-1
	13.	Uniform Partnership Act (1997)	79-13-101
	14.	Mississippi Uniform Limited Partnership Act ..	79-14-101
	15.	Investment Trusts	79-15-1
	16.	Mississippi Registration of Foreign Business Trusts Act	79-16-1
	17.	Agricultural Associations; Conversion to Corporate Form	79-17-1
	19.	Agricultural Cooperative Marketing Associations	79-19-1
	21.	Aquatic Products Marketing Association	79-21-1
	22.	Mississippi Aquaculture Act of 1988	79-22-1
	23.	Commercial and Proprietary Information	79-23-1
	25.	Mississippi Shareholder Protection Act	79-25-1
	27.	Mississippi Control Share Act	79-27-1
	29.	Revised Mississippi Limited Liability Company Act	79-29-101
	31.	Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed]	79-31-1
	33.	Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations	79-33-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS (Cont'd)

Beginning Section
35. The Mississippi Registered Agents Act 79-35-1
37. Mississippi Entity Conversion and Domestication Act 79-37-101

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

CHAPTER
1. Department of Banking and Consumer Finance 81-1-1
3. Incorporation and Organization of Banks 81-3-1
5. General Provisions Relating to Banks and Banking 81-5-1
7. Branch Banks 81-7-1
8. Regional Banking Institutions 81-8-1
9. Insolvent Banks 81-9-1
11. Savings and Loan Associations [Repealed] 81-11-1
12. Savings Associations Law 81-12-1
13. Credit Unions 81-13-1
14. Savings Bank Law 81-14-1
15. Mississippi Rural Credit Law 81-15-1
17. Farmers' Credit Associations 81-17-1
18. Mississippi S.A.F.E. Mortgage Act 81-18-1
19. Consumer Loan Broker Act 81-19-1
20. Consumer Complaints and Disputes Against Mortgage Companies 81-20-1
21. Insurance Premium Finance Companies 81-21-1
22. Mississippi Debt Management Services Act [Repealed effective July 1, 2016] 81-22-1
23. Interstate Bank Branching 81-23-1
25. The Mississippi International Banking Act 81-25-1
27. Multistate, State and Limited Liability Trust Institutions 81-27-1.001
29. Lender Trade Name and Trademark Use 81-29-1

TITLE 83. INSURANCE

CHAPTER
1. Department of Insurance 83-1-1
2. Competitive Rating for Property and Casualty Insurance 83-2-1
3. Commissioner of Insurance, Rating Bureau and Rates 83-3-1
5. General Provisions Relative to Insurance and Insurance Companies 83-5-1
6. Registration and Examination of Insurers 83-6-1
7. Life Insurance 83-7-1

TITLE 83. INSURANCE (Cont'd)

		Beginning Section
9.	Accident, Health and Medicare Supplement Insurance	83-9-1
11.	Automobile Insurance	83-11-1
13.	Fire Insurance	83-13-1
14.	Homeowners' and Farmowners' Insurance [Repealed]	83-14-1
15.	Title Insurance	83-15-1
17.	Insurance Agents, Solicitors, or Adjusters	83-17-1
18.	Insurance Administrators and Managing General Agents	83-18-1
19.	Domestic Companies	83-19-1
20.	Domicile Change for Domestic and Foreign Insurers	83-20-1
21.	Foreign Companies	83-21-1
23.	Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
24.	Insurers Rehabilitation and Liquidation Act	83-24-1
25.	Co-operative Insurance	83-25-1
27.	Surety Companies	83-27-1
29.	Fraternal Societies	83-29-1
30.	Larger Fraternal Benefit Societies	83-30-1
31.	Mutual Companies	83-31-1
33.	Reciprocal Insurance	83-33-1
34.	Windstorm Underwriting Association	83-34-1
35.	Underwriting Association [Repealed]	83-35-1
36.	Joint Underwriting Association for Medical Malpractice Insurance	83-36-1
37.	Burial Associations	83-37-1
38.	Mississippi Residential Property Insurance Underwriting Association Law	83-38-1
39.	Bail Bonds and Bondsmen	83-39-1
41.	Hospital and Medical Service Associations and Contracts	83-41-1
43.	Nonprofit Dental Service Corporations	83-43-1
45.	Nonprofit, Community Service Blood Supply Plans	83-45-1
47.	Nonprofit Medical Liability Insurance Corporations	83-47-1
48.	Medical Malpractice Insurance Availability Act	83-48-1
49.	Legal Expense Insurance	83-49-1
51.	Dental Care Benefits	83-51-1
53.	Credit Life and Credit Disability Insurance	83-53-1

TITLE 83. INSURANCE (Cont'd)

			Beginning Section
	54.	Mississippi Creditor-Placed Insurance Act	83-54-1
	55.	Risk Retention Act	83-55-1
	57.	Home Warranties [Repealed].	83-57-1
	58.	New Home Warranty Act	83-58-1
	59.	Business Transacted With Producer Controlled Insurer Act	83-59-1
	61.	Voluntary Basic Health Insurance Coverage Law	83-61-1
	62.	Health Savings Accounts	83-62-1
	63.	Small Employer Health Benefit Plans	83-63-1
	64.	Health Discount Plans	83-64-1
	65.	Regulation of Vehicle Service Contracts	83-65-101
	67.	Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery	83-67-1
	69.	Interstate Insurance Product Regulation Compact	83-69-1
	71.	Unfair Discrimination Against Subjects of Abuse in Health, Life, and Disability Income Insurance	83-71-1
	73.	Portable Electronics Insurance	83-73-1
	75.	Homeowners Insurance Discount for Hurricane or Windstorm Damage Mitigation	83-75-1
	77.	Health Care Sharing Ministries	83-77-1
	79.	Property Insurance Clarity Act	83-79-1
	81.	Mississippi Direct Primary Care Act	83-81-1
	83.	Limited Lines Travel Insurance Act	83-83-1

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

CHAPTER	1.	Assignment for Benefit of Creditors	85-1-1
	3.	Exempt Property	85-3-1
	5.	Joint and Several Debtors	85-5-1
	7.	Liens	85-7-1
	8.	Uniform Federal Lien Registration Act	85-8-1
	9.	Debt Adjusting or Credit Arranging [Repealed].	85-9-1
	11.	Mississippi Uniform State Tax Lien Registration Act	85-11-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER	1.	Gambling and Future Contracts	87-1-1
	3.	Power and Letters of Attorney	87-3-1
	5.	Principal and Surety	87-5-1
	7.	Improvements to Real Property	87-7-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS (Cont'd)

		Beginning Section
	9. General Provisions	87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER	1. Land and Conveyances	89-1-1
	2. Liability of Recreational Landowners	89-2-1
	3. Acknowledgments	89-3-1
	5. Recording of Instruments	89-5-1
	6. Mississippi Plane Coordinate System	89-6-1
	7. Landlord and Tenant	89-7-1
	8. Residential Landlord and Tenant Act	89-8-1
	9. Condominiums	89-9-1
	11. Escheats	89-11-1
	12. Uniform Disposition of Unclaimed Property Act	89-12-1
	13. Party Fences	89-13-1
	15. Party Walls	89-15-1
	17. Salvage	89-17-1
	19. Mississippi Conservation Easements	89-19-1
	21. Uniform Disclaimer of Property Interests Act	89-21-1
	23. Mississippi Uniform Environmental Covenants Act	89-23-1
	25. Mississippi Uniform Statutory Rule Against Perpetuities	89-25-1

TITLE 91. TRUSTS AND ESTATES

CHAPTER	1. Descent and Distribution	91-1-1
	3. Uniform Simultaneous Death Law	91-3-1
	5. Wills and Testaments	91-5-1
	7. Executors and Administrators	91-7-1
	8. Mississippi Uniform Trust Code	91-8-101
	9. Trusts and Trustees	91-9-1
	11. Fiduciary Security Transfers	91-11-1
	13. Fiduciary Investments	91-13-1
	15. Release of Powers of Appointment	91-15-1
	17. Mississippi Principal and Income Act of 2013	91-17-101
	19. Gifts to Minors [Repealed]	91-19-1
	20. Transfers to Minors	91-20-1
	21. Uniform Transfer-on-Death Security Registration Act	91-21-1

TITLE 93. DOMESTIC RELATIONS

CHAPTER	1. Marriage	93-1-1

TITLE 93. DOMESTIC RELATIONS (Cont'd)

Beginning Section
3. Husband and Wife 93-3-1
5. Divorce and Alimony 93-5-1
7. Annulment of Marriage 93-7-1
9. Bastardy 93-9-1
11. Enforcement of Support of Dependents 93-11-1
12. Enforcement of Child Support Orders from Foreign Jurisdictions 93-12-1
13. Guardians and Conservators 93-13-1
14. Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 93-14-101
15. Mississippi Termination of Parental Rights Law 93-15-1
16. Grandparents' Visitation Rights 93-16-1
17. Adoption, Change of Name, and Legitimation of Children 93-17-1
19. Removal of Disability of Minority 93-19-1
21. Protection from Domestic Abuse 93-21-1
22. Uniform Interstate Enforcement of Domestic Violence Protection Orders 93-22-1
23. Uniform Child Custody Jurisdiction Act [Repealed] 93-23-1
25. Uniform Interstate Family Support Act 93-25-1
27. Uniform Child Custody Jurisdiction and Enforcement Act 93-27-101
29. Uniform Child Abduction Prevention Act 93-29-1
31. Supporting and Strengthening Families Act 93-31-1

TITLE 95. TORTS

CHAPTER 1. Libel and Slander 95-1-1
3. Nuisances 95-3-1
5. Trespass 95-5-1
7. Liability Exemption for Donors of Food 95-7-1
9. Liability Exemption for Volunteers and Sports Officials 95-9-1
11. Liability Exemption for Equine and Livestock Activities 95-11-1
13. Liability Exemption for Noise Pollution by Sportshooting Ranges 95-13-1
15. Liability Exemption for Report of Suspicious Activity or Behavior 95-15-1

TITLE 97. CRIMES

CHAPTER 1. Conspiracy, Accessories and Attempts 97-1-1

TITLE 97. CRIMES (Cont'd)

Beginning Section
3. Crimes Against the Person 97-3-1
5. Offenses Affecting Children 97-5-1
7. Crimes Against Sovereignty or Administration of Government 97-7-1
9. Offenses Affecting Administration of Justice 97-9-1
11. Offenses Involving Public Officials 97-11-1
13. Election Crimes 97-13-1
15. Offenses Affecting Highways, Ferries and Waterways 97-15-1
17. Crimes Against Property 97-17-1
19. False Pretenses and Cheats 97-19-1
21. Forgery and Counterfeiting 97-21-1
23. Offenses Affecting Trade, Business and Professions 97-23-1
25. Offenses Affecting Railroads, Public Utilities and Carriers 97-25-1
27. Crimes Affecting Public Health 97-27-1
29. Crimes Against Public Morals and Decency 97-29-1
31. Intoxicating Beverage Offenses 97-31-1
32. Tobacco Offenses 97-32-1
33. Gambling and Lotteries 97-33-1
35. Crimes Against Public Peace and Safety 97-35-1
37. Weapons and Explosives 97-37-1
39. Dueling 97-39-1
41. Cruelty to Animals 97-41-1
43. Racketeer Influenced and Corrupt Organization Act (RICO) 97-43-1
44. Mississippi Streetgang Act 97-44-1
45. Computer Crimes and Identity Theft 97-45-1

TITLE 99. CRIMINAL PROCEDURE

CHAPTER
1. General Provisions; Time Limitations; Costs ... 99-1-1
3. Arrests 99-3-1
5. Bail 99-5-1
7. Indictment 99-7-1
9. Process 99-9-1
11. Jurisdiction and Venue 99-11-1
13. Insanity Proceedings 99-13-1
15. Pretrial Proceedings 99-15-1
17. Trial 99-17-1
18. Office of State Public Defender 99-18-1
19. Judgment, Sentence, and Execution 99-19-1

TITLE 99. CRIMINAL PROCEDURE (Cont'd)

		Beginning Section
20.	Community Service Restitution	99-20-1
21.	Fugitives From Other States	99-21-1
23.	Peace Bonds	99-23-1
25.	Forms	99-25-1
27.	Proceedings for Intoxicating Beverage Offenses	99-27-1
29.	Vagrancy Proceedings	99-29-1
31.	Obscene Publications Proceedings [Repealed]	99-31-1
33.	Prosecutions Before Justice Court Judges	99-33-1
35.	Appeals	99-35-1
36.	Victim Assistance Coordinator	99-36-1
37.	Restitution to Victims of Crimes	99-37-1
38.	Crime Victim's Escrow Account Act	99-38-1
39.	Post-Conviction Proceedings	99-39-1
40.	Indigent Appeals Division	99-40-1
41.	Mississippi Crime Victims' Compensation Act	99-41-1
43.	Mississippi Crime Victims' Bill of Rights	99-43-1
45.	Statewide Automated Victim Information and Notification System	99-45-1
47.	Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program	99-47-1
49.	Preservation and Accessibility of Biological Evidence	99-49-1

MISSISSIPPI CODE
1972

ANNOTATED

VOLUME TWELVE A

TITLE 51

WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

Chapter 1. Navigable Waters 51-1-1
Chapter 2. Mississippi Marine Litter Act 51-2-1
Chapter 3. Water Resources; Regulation and Control 51-3-1
Chapter 4. Mississippi Scenic Streams Stewardship Act 51-4-1
Chapter 5. Subsurface Waters; Well Drillers 51-5-1
Chapter 7. Water Management Districts 51-7-1
Chapter 8. Joint Water Management Districts 51-8-1
Chapter 9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act 51-9-1
Chapter 11. Pearl River Basin Development District 51-11-1
Chapter 13. Tombigbee Valley Authority and Water Management District 51-13-1
Chapter 15. Pat Harrison Waterway Commission and District 51-15-1
Chapter 17. Big Black River Basin District 51-17-1
Chapter 19. West Central Mississippi Waterway Commission [Repealed]
Chapter 21. Lower Mississippi River Basin Development District [Repealed]
Chapter 23. Lower Yazoo River Basin District. [Repealed]
Chapter 25. Yellow Creek Watershed Authority 51-25-1
Chapter 27. Tennessee-Tombigbee Waterway Compact 51-27-1
Chapter 29. Drainage Districts with Local Commissioners 51-29-1
Chapter 31. Drainage Districts with County Commissioners 51-31-1
Chapter 33. Provisions Common to Drainage Districts and Swamp Land Districts 51-33-1
Chapter 35. Flood Control 51-35-1
Chapter 37. Watershed Districts 51-37-1
Chapter 39. Storm Water Management Districts 51-39-1
Chapter 41. Public Water Authorities 51-41-1

CHAPTER 1

Navigable Waters

Sec.
51-1-1. Definition.

51-1-3. Repealed.
51-1-4. What constitutes public waterways; rights thereon; prohibited activities; penalties.
51-1-5. Removal of obstructions.
51-1-7. Obstruction of streams.
51-1-9. Enforcement of lien.
51-1-11. Damages to bridges.

§ 51-1-1. Definition.

Except as otherwise provided in Section 27-109-1, all rivers, creeks and bayous in this state, twenty-five (25) miles in length, that have sufficient depth and width of water for thirty (30) consecutive days in the year for floating a steamboat with carrying capacity of two hundred (200) bales of cotton are hereby declared to be navigable waters of this state.

SOURCES: Codes, 1906, § 4408; Hemingway's 1917, § 7038; 1930, § 6463; 1942, § 8414; Laws, 1896, ch. 64; Laws, 1990, 1st Ex Sess, ch. 45, § 142, eff from and after passage (approved June 29, 1990).

Cross References — Obstructions in navigable waters, see Miss. Const. Art. 4, § 81.

For another definition of navigable waters, see § 1-3-31.

JUDICIAL DECISIONS

1. In general.

Navigable waters are those waters which are navigable in fact; those waters are navigable in fact which are navigable by loggers, fishermen and pleasure boaters. Ryals v. Pigott, 580 So. 2d 1140 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328 (1991).

In an action to quiet title and to enjoin trespass, wherein the defendants claimed a right to enter upon a stream located upon the land, where it was shown that the stream was only nine miles long, was obstructed at many points, and had never been used as a water highway for commercial or other traffic except that at the turn of the century logs had sometimes been floated down it, it was apparent that the stream was not a navigable waterway which the defendants as members of the general public were entitled to enter upon at will. Downes v. Crosby Chems., Inc., 234 So. 2d 916 (Miss. 1970).

The statute defining navigable waters is not unconstitutionally vague or incapable of exact definition or application, and it is apparent that the statute was intended to exclude small private creeks and streams, not navigable in fact, and declare navigable only streams actually capable of being navigated by substantial commercial traffic. Downes v. Crosby Chems., Inc., 234 So. 2d 916 (Miss. 1970).

This section [Code 1942, § 8414] does not enlarge the meaning of the term "navigable waters of the State" as used in Const 1890, § 81. Culley v. Pearl River Indus. Comm'n, 234 Miss. 788, 108 So. 2d 390 (1959).

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waters §§ 136 et seq.

CJS. 65 C.J.S., Navigable Waters §§ 1 et seq.

§ 51-1-3. Repealed.

Repealed by Laws, 1988, ch. 598, § 2, eff from and after passage (approved May 25, 1988).

[Codes, Hutchinson's 1848, ch. 10, Art 6(1); 1857, ch. 15, art 33; 1871, § 2371; 1880, § 865; 1892, § 3898; 1906, § 4407; Hemingway's 1917, § 7087; 1930, § 6462; 1942, § 8413]

Editor's Note — Former § 51-1-3 pertained to navigable waters as public highways. Laws of 1988, ch. 598, § 3, provides as follows:

"SECTION 3. The repeal of Section 51-1-3, Mississippi Code of 1972, by Section 2 of this act shall not affect any designation of navigable waters as public highways by the Legislature or the board of supervisors which has been made prior to the effective date of this act."

§ 51-1-4. What constitutes public waterways; rights thereon; prohibited activities; penalties.

(1) Those portions of all natural flowing streams in this state having a mean annual flow of not less than one hundred (100) cubic feet per second, as determined and designated on appropriate maps by the Mississippi Department of Environmental Quality, shall be public waterways of the state on which the citizens of this state and other states shall have the right of free transport in the stream and the right to fish and engage in water sports. Persons exercising the rights granted by this section shall do so at their own risk, and such persons, their heirs or others on their behalf shall not be entitled to recover any damages against any owner of property or an interest in property on or along such public waterways or against anyone using such property with permission of the owner for any injury to or death of persons or damage to property arising out of the exercise of rights granted by this section, other than those damages which may be recovered for intentional or malicious torts or for gross or willful negligence against the owner of property or an interest therein or against anyone using such property with permission of the owner.

(2) Nothing contained in this section shall authorize anyone utilizing public waterways, under the authority granted by this section, to trespass upon adjacent lands or to launch or land any commercial or pleasure craft along or from the shore of such waterways except at places established by public or private entities for such purposes.

(3) Nothing contained in this section shall authorize any person utilizing those public waterways, under the authority granted by this section, to disturb the banks or beds of such waterways or the discharge of any object or substance into such waters or upon or across any lands adjacent thereto or to hunt or fish or go on or across any adjacent lands under floodwaters beyond the natural banks of the bed of the public waterway. Floodwater which has overflowed the banks of a public waterway is not a part of the public waterway.

(4) The right of the public to use public waterways does not include the use of motorized vehicles in the beds of a public waterway without the written

permission of the landowner. Any person who uses a motorized vehicle in the bed of a public waterway without the written permission of the landowner may be punished as provided in Section 97-17-93.

(a) It shall be unlawful for any person to operate any all-terrain vehicle, four-wheel-drive motorized vehicle, or other wheeled or tracked conveyance within the bed of a public waterway and following the meanders thereof in such a way as to cause damage to the streambed.

(b) It shall be unlawful for any person to offer a permission or a license for a fee for the operation of any of the conveyances prohibited in this subsection within the bed of a public waterway.

(c) A violation of this subsection shall be a Class II violation and, upon conviction thereof, may be punished as provided in Section 49-7-143.

(d) Nothing in this subsection shall be construed as prohibiting the normal, usual and ordinary fording of streams by persons authorized to do so for legitimate recreational, agricultural, forestry or other lawful purposes.

(5) Nothing contained in this section shall be construed to prohibit the construction of dams and reservoirs by the State of Mississippi or any of its agencies or political subdivisions, or riparian owners, in the manner now or hereafter authorized by law, or in any way to affect the rights of riparian landowners along such waterways except as specifically provided hereinabove or to amend or repeal any law relating to pollution or water conservation, or to affect in any manner the title to the banks and beds of any such stream or the title to any minerals thereunder, or to restrict the mining or extraction of such minerals or the right of ingress and egress thereto.

(6) The provisions of this section limiting the liability of owners of property along public waterways and persons using such property with permission of the owners shall not be construed to limit any rights of claimants for damages under federal statutes or acts applying to navigable streams or waterways or any other civil causes of action subject to admiralty or maritime jurisdiction, nor shall those provisions be construed to limit the rights of any parties involved in litigation founded upon the commercial or business usage of any navigable streams or waterways.

(7) This section shall apply only to natural flowing streams.

(8) Any lake hydrologically connected to a natural flowing stream and listed as a public waterway under subsection (1) on July 1, 2000, and subsequently removed from that list before July 1, 2001, by the Commission on Environmental Quality because the lake did not meet the requirements of subsection (1), shall be presumed to be a public waterway until a court of competent jurisdiction determines otherwise. Nothing in this subsection shall be construed to determine the property rights in the bed or banks of the lake, the right of ingress or egress across private property to the lake, or mineral interests.

SOURCES: Codes, 1942, §§ 8413.5, 8413.6; Laws, 1972, ch. 361, §§ 1, 2; Laws, 1988, ch. 598, § 1; Laws, 1994, ch. 653, § 1; Laws, 2002, ch. 368, § 1; Laws, 2003, ch. 482, § 1; Laws, 2008, ch. 545, § 1, eff from and after July 1, 2008.

JUDICIAL DECISIONS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 51-1-3.

1. In general.

A river was navigable in fact, and therefore constituted public waters, where the customary mode of travel on the river was through small outboard motorboats, fishing boats, canoes, tubes and other pleasure craft, the customary mode of commerce and trade was providing facilities for hire where persons could rent such vessels, and the river was capable in its ordinary condition of supporting commercial fishing. Ryals v. Pigott, 580 So. 2d 1140 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328 (1991).

A river was a public waterway, so that riparian landowners could acquire no rights in the surface or waters other than those they enjoyed as members of the general public, where the river was navigable in fact or with reasonable channel maintenance and dredging, and the river had a mean annual flow of 188 cubic feet per second and had been designated a public waterway by the Mississippi Department of Natural Resources [now Mississippi Department of Environmental Quality], thus conforming to the standards of the 1988 amendment to § 51-1-4. Ryals v. Pigott, 580 So. 2d 1140 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328 (1991).

Section 51-1-4's 100 cubic feet per second standard for determining what constitutes a public waterway suffers no constitutional or other infirmity when scrutinized under §§ 14, 17 or 81 of the Mississippi Constitution or otherwise, or under federal law, including but not limited to the Equal Footings Doctrine and the congressional enactment of 1817 creating the State of Mississippi. Ryals v. Pigott, 580 So. 2d 1140 (Miss. 1990), cert. denied, 502 U.S. 940, 112 S. Ct. 377, 116 L. Ed. 2d 328 (1991).

Reasonable interpretation of "unless" language of § 51-1-4 is as savings clause, excluding from operation of statute any causes of action which accrued prior to its effective date (April 20, 1972). Dumas v. Pike County, 642 F. Supp. 131 (S.D. Miss. 1986).

Obvious legislative intent behind § 51-1-4 was to encourage free public use of waterways of state for recreation by eliminating conflicting interests of riparian landowners at least insofar as actual streams of waterways are concerned. Dumas v. Pike County, 642 F. Supp. 131 (S.D. Miss. 1986).

Nothing in § 51-1-4 relieves landowner of liability for maintaining dangerous condition on his land; thus, as to negligence occurring outside waterway stream (i.e., maintenance of land from which plaintiff dived into river and failure to post adequate warnings thereon), which may have caused or contributed to plaintiff's injury, statute offers no absolute bar to recovery. Dumas v. Pike County, 642 F. Supp. 131 (S.D. Miss. 1986).

2.-5. [Reserved for future use.]

6. Under former § 51-1-3.

The waters and the soil under the waters of the bay of St. Louis over which the state highway commission erected a bridge, are public highways which are owned by the state in trust for the people of the state and those rights constituting that title cannot be sold or transferred irrevocably. Crary v. State Hwy. Comm'n, 219 Miss. 284, 68 So. 2d 468 (1953).

Where state constructed a bridge across the bay of St. Louis, which bridge was partly across area of riparian owners who had been granted the privilege and license of planting and gathering oysters and erecting bathhouses and other structures, the state by building this bridge exercised its power to impose an additional public use upon a property which was already set aside for public purposes and the exercise of this power was not taking of property for which compensation must be made. Crary v. State Hwy. Comm'n, 219 Miss. 284, 68 So. 2d 468 (1953).

Constitutional provision relating to obstruction of navigable waters applies to waters of Mississippi Sound. Money v. Wood, 152 Miss. 17, 118 So. 357 (1928).

For history of ownership of navigable waters see Money v. Wood, 152 Miss. 17, 118 So. 357 (1928).

A state may authorize the building of a bridge wholly within its territory over a navigable interstate stream in the absence of congressional action touching the subject. Kansas City, M. & B.R. Co. v. J.T. Wiygul & Son, 82 Miss. 223, 33 So. 965 (1903), error dismissed, 199 U.S. 616, 26 S. Ct. 743, 50 L. Ed. 335 (1905).

Power granted a railroad company to build a bridge across a navigable stream includes the power to repair it. Kansas City, M. & B.R. Co. v. J.T. Wiygul & Son, 82 Miss. 223, 33 So. 965 (1903), error dismissed, 199 U.S. 616, 26 S. Ct. 743, 50 L. Ed. 335 (1905).

ATTORNEY GENERAL OPINIONS

As by statute, public has right of free transport and recreation, there is no statutory authority for county to regulate points of entry and exit, although, private riparian owners have legal recourse for trespass to their lands. Smith, August 17, 1990, A.G. Op. #90-0554.

Applicable case law and statutory law would allow someone utilizing public waters to tie to tree or drop anchor since this is normal use by those engaged in fishing or other water sports; waterfowl hunter has right to utilize water surface on any public waterway and this would include right to float freely on and anchor to beds of waterway in order to carry out this sport; wading by hunter along bed of public waterway is also allowed. Polles Dec. 6, 1993, A.G. Op. #93-0836.

Enforcement officers of the Mississippi Department of Wildlife, Fisheries and Parks should regard the location of the "ordinary and natural banks" of public waterways as a factual determination which must be made on a case by case basis when enforcing criminal and game laws, and prosecutors should be prepared to show proof of the locations of banks to the court hearing the matter. Polles, March 30, 2007, A.G. Op. #07-00134, 2007 Miss. AG LEXIS 92.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waters §§ 136 et seq.

CJS. 93 C.J.S., Waters §§ 9 et seq.

§ 51-1-5. Removal of obstructions.

Any person may enter and remove any and all obstructions to the navigation thereof which may be in or across or over any navigable stream.

SOURCES: Codes, 1857, ch. 15, art 35; 1871, § 2373; 1880, § 867; 1892, § 3900; 1906, § 4410; Hemingway's 1917, § 7090; 1930, § 6464; 1942, § 8415.

Cross References — Crime of obstructing or polluting navigable waters, see § 97-15-45.

RESEARCH REFERENCES

ALR. Liability of person obstructing stream, ravine, or similar area by debris or waste, for damages caused by flooding or the like. 29 A.L.R.2d 447.

Am Jur. 78 Am. Jur. 2d, Waters §§ 180, 181.

CJS. 65 C.J.S., Navigable Waters § 54.

§ 51-1-7. Obstruction of streams.

If any person shall have timber, logs, or lumber in any navigable stream and shall allow the same to accumulate or form in blocks or jams so as to obstruct navigation or to hinder or delay any other person in the driving or running of logs, timber, or lumber, such other person may cause the block or jam to be broken and the obstructing logs, timber, or lumber to be driven, boomed, rafted, or run at the expense of the owner; and the costs thereof shall be a lien on the logs, timber, or lumber.

SOURCES: Codes, 1892, § 4408; 1906, § 4973; Hemingway's 1917, § 7870; 1930, § 6465; 1942, § 8416; Laws, 1882, p 87.

Cross References — Power of railroads to construct bridges and docks upon bodies of water, see § 77-9-179.

Crime of obstructing or polluting navigable waters, see § 97-15-39.

Crime of obstruction of waterway by ship captain, see § 97-15-43.

RESEARCH REFERENCES

ALR. Liability of person obstructing stream, ravine, or similar area by debris or waste, for damages caused by flooding or the like. 29 A.L.R.2d 447.

Am Jur. 78 Am. Jur. 2d, Waters §§ 171 et seq.

CJS. 65 C.J.S., Navigable Waters §§ 52, 53 et seq.

§ 51-1-9. Enforcement of lien.

The person so having a lien on logs, timber, or lumber may, after giving the owner five days' notice thereof and of the sum due, sell the property at public auction for cash, upon advertising the sale by posting notices of the time, place, and terms for twenty days in three public places of the county. If the owner be unknown, the sale may be made after advertisement for three weeks.

SOURCES: Codes, 1892, § 4409; 1906, § 4974; Hemingway's 1917, § 7871; 1930, § 6466; 1942, § 8417.

§ 51-1-11. Damages to bridges.

If any person rafting or floating timber or logs in a stream shall permit damage by such logs or timber to be done a bridge built at public expense, he shall be liable therefor; and the damages may be recovered by suit against him, and the timber or logs causing the damage may be seized and sold therefor.

SOURCES: Codes, 1892, § 4410; 1906, § 4975; Hemingway's 1917, § 7872; 1930, § 6467; 1942, § 8418.

CHAPTER 2

Mississippi Marine Litter Act

Sec.
51-2-1. Short title.
51-2-3. Disposal of plastics and other garbage in marine waters; storage of certain substances in closed containers on vessels in marine waters; release of substances due to accidents or acts of nature; penalties.
51-2-5. Commission to promulgate regulations.
51-2-7. Marinas and access areas to have proper disposal facilities on site.

§ 51-2-1. Short title.

This chapter shall be cited as the "Mississippi Marine Litter Act of 1989."

SOURCES: Laws, 1989, ch. 475, § 1, eff from and after July 1, 1989.

Editor's Note — Laws, 1991, ch. 557, § 2, removed the repeal date established by Laws, 1989, ch. 475, § 5.

RESEARCH REFERENCES

ALR. Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 852-859.

Lawyers' Edition. Validity and construction of federal statute (33 USCS sec. 407) making unlawful the deposit of refuse in navigable waters — federal cases. 16 L. Ed. 2d 1256.

§ 51-2-3. Disposal of plastics and other garbage in marine waters; storage of certain substances in closed containers on vessels in marine waters; release of substances due to accidents or acts of nature; penalties.

(1) It is unlawful for any person or vessel to discharge any type of plastics, including synthetic ropes, fishing nets, garbage bags and other garbage, including paper products, glass, metal, dunnage, lining and packing materials into the marine waters of this state.

(2) For purposes of this section, vessel means any boat, barge, or other vehicle operating in the marine environment from the largest supertanker to the smallest recreational craft.

(3) The following substances shall be kept in closed containers whenever present on a vessel in the marine waters of this state: fuel, oil, paints, varnishes, solvents, pesticides, insecticides, fungicides, algicides, other hazardous liquids, and those substances referred to in subsection (1). The containers shall be sufficient to prevent the substances from escaping in the event the container is released into marine waters. Closed containers shall not be required for substances intended for human consumption, or for bait. Closed containers shall not be required while vessels are taking on or unloading cargo and provisions.

(4) This section shall not apply to substances released into marine waters accidentally or due to an act of nature, provided:

(a) That persons involved in an accident make good faith efforts to recover any substances released, proper allowances being first made for personal safety; and

(b) That snagged or entangled fishing tackle and nets are recovered as much as is reasonably possible, and the unrecovered remainder is caused to sink.

(5)(a) For a first violation, any person or vessel who violates this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or community service requiring litter collection of not less than twenty-five (25) hours nor more than two hundred fifty (250) hours, or both. Persons under eighteen (18) years of age shall be penalized with community service, and may be assessed a fine as well. Each day of a continuing violation constitutes a separate violation.

(b) For a second or subsequent violation, any person or vessel who violates this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed Ten Thousand Dollars ($10,000.00), or revocation of boating licenses, or both.

SOURCES: Laws, 1989, ch. 475, § 2; Laws, 1991, ch. 557 § 1, eff from and after passage (approved April 12, 1991).

Editor's Note — Laws, 1991, ch. 557, § 2, removed the repeal date established by Laws, 1989, ch. 475, § 5.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 852-859.

Lawyers' Edition. Validity and construction of federal statute (33 USCS sec. 407) making unlawful the deposit of refuse in navigable waters-federal cases. 16 L. Ed. 2d 1256.

§ 51-2-5. Commission to promulgate regulations.

The Commission on Marine Resources is authorized to promulgate regulations to carry out this chapter, including adopting the provisions of Annex V of the Protocol of 1978 of the International Convention for the Pollution by Ships.

SOURCES: Laws, 1989, ch. 475, § 3, eff from and after July 1, 1989; Laws, 1994, ch. 578, § 61, eff from and after July 1, 1994.

Editor's Note — Laws, 1991, ch. 557, § 2, removed the repeal date established by Laws, 1989, ch. 475, § 5.

RESEARCH REFERENCES

ALR. Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 852-859.

Lawyers' Edition. Validity and construction of federal statute (33 USCS sec. 407) making unlawful the deposit of refuse in navigable waters-federal cases. 16 L. Ed. 2d 1256.

§ 51-2-7. Marinas and access areas to have proper disposal facilities on site.

The Commission on Marine Resources shall require, by regulation, that all marinas and all other access areas used by vessels have proper disposal facilities on site. The commission shall establish the requirements for such disposal reception facilities.

SOURCES: Laws, 1989, ch. 475, § 4, eff from and after July 1, 1989; Laws, 1994, ch. 578, § 62, eff from and after July 1, 1994.

Editor's Note — Laws, 1991, ch. 557, § 2, removed the repeal date established by Laws, 1989, ch. 475, § 5.

RESEARCH REFERENCES

ALR. Validity and construction of anti-water pollution statutes or ordinances. 32 A.L.R.3d 215.

Am Jur. 61C Am. Jur. 2d, Pollution Control §§ 852-859.

Lawyers' Edition. Validity and construction of federal statute (33 USCS sec. 407) making unlawful the deposit of refuse in navigable waters-federal cases. 16 L. Ed. 2d 1256.

CHAPTER 3

Water Resources; Regulation and Control

Article 1. General Provisions 51-3-1
Article 3. Mississippi Water Resources Council 51-3-101

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
51-3-1. Declaration of policy on conservation of water resources.
51-3-3. Definitions.
51-3-5. Permit requirement; notice of preexisting rights or beneficial usage.
51-3-7. Exemptions from permit requirement; certain uses permissible.
51-3-9. Duration of permit; reissuance; termination.
51-3-11. Commission to issue water use warning or declare water use caution area; conditions warranting issuance; notice; plan to alleviate or correct; regulations.
51-3-13. Consideration of applications; criteria.
51-3-15. State Permit Board as permitting authority; powers; hearings.
51-3-16. Bureau of land and water resources; duties and powers in assisting waterway, river basin and watershed authorities and districts.
51-3-17. Repealed.
51-3-18. Authorities and districts to receive assistance from Department of Environmental Quality.
51-3-19. Repealed.
51-3-20. Repealed.
51-3-21. State water management plan.
51-3-23. Reporting requirements.
51-3-25. Regulatory authority of commission.
51-3-27. Repealed.
51-3-29. Unpermitted waters.
51-3-31. Application for permit; disposition of fees.
51-3-33. Duty of board as to application.
51-3-35. Approval of application.
51-3-37. Repealed.
51-3-39. Construction, modification, and inspection of dams and reservoirs.
51-3-40. Repealed.
51-3-41. Compacts and agreements.
51-3-43. Right of entry upon public or private lands.
51-3-44. Disclosure; confidentiality claim; violation, penalty.
51-3-45. Changes in approved diversion.
51-3-47. Water rights adjudicated by court.
51-3-49. Appeal from order of board or commission.
51-3-51. Hearing procedures.
51-3-53. Repealed.
51-3-55. Enforcement authority; penalties; injunctive relief.

§ 51-3-1. Declaration of policy on conservation of water resources.

It is hereby declared that the general welfare of the people of the State of Mississippi requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, that the waste or unreasonable use, or unreasonable method of use, of water be prevented, that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

It is the policy of the Legislature that conjunctive use of groundwater and surface water shall be encouraged for the reasonable and beneficial use of all water resources of the state. The policies, regulations and public laws of the State of Mississippi shall be interpreted and administered so that, to the fullest extent possible, the ground and surface water resources within the state shall be integrated in their use, storage, allocation and management.

All water, whether occurring on the surface of the ground or underneath the surface of the ground, is hereby declared to be among the basic resources of this state to therefore belong to the people of this state and is subject to regulation in accordance with the provisions of this chapter. The control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures to effectively and efficiently manage, protect and utilize the water resources of Mississippi.

SOURCES: Codes, 1942, § 5956-01; Laws, 1956, ch. 167, 1; Laws, 1962, ch. 218; Laws, 1985, ch. 459, § 1, eff from and after passage (approved April 1, 1985).

Cross References — Enforcement by commission of provisions of § 51-3-1 through 51-3-55, see § 51-3-55.

Creation of master water management districts, see § 51-7-1.

Purpose of § 51-7-1 et seq. to provide for creation of master water management districts for carrying out improvement of drainage, etc., and for other beneficial use as defined in § 51-3-1 et seq., see 51-7-1.

Powers of drainage districts, see § 51-31-1 et seq.

Cooperative agreements for conservation programs; provisions common to Drainage Districts and Swamp Land Districts, see § 51-33-13.

Urban Flood and Drainage Control Law, see § 51-35-301 et seq.

Required preparation and implementation of coastal area plan by marine resources council that would further public policy expressed by this section, see § 57-15-6.

Water Resources Research Institute, see § 57-55-7.

JUDICIAL DECISIONS

1. Groundwater withdrawal permits.

Mississippi Department of Environmental Quality Permit Board did not err in granting groundwater withdrawal permits to a county utility authority because the factors it considered were reasonable, it made specific findings as to each factor, and its findings were supported by substantial evidence; the utility authority owned the land upon which it would install wells for the groundwater withdrawal and planned to use the water for public water supply, the highest-ranked beneficial use of water. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

§ 51-3-3. Definitions.

The following words and phrases, for the purposes of this chapter, shall have the meanings respectively ascribed to them in this section unless the context clearly indicates a different meaning:

(a) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, public or private corporation or the United States, or any officer or employee thereof.

(b) "Surface water" means that water occurring on the surface of the ground.

(c) "Domestic uses" means the use of water for ordinary household purposes, the watering of farm livestock, poultry and domestic animals and the irrigation of home gardens and lawns.

(d) "Municipal use" means the use of water by a municipal government and the inhabitants thereof, primarily to promote the life, safety, health, comfort and business pursuits of the inhabitants. It does not include the irrigation of crops within the corporate boundaries.

(e) "Beneficial use" means the application of water to a useful purpose as determined by the commission, but excluding waste of water.

(f) "Permittee" means the person who obtains a permit from the board authorizing him to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use and who makes actual use of the water for such purpose, or his successor.

(g) "Permitted use" means:

(1) The use of a specific amount of water at a specific time and at a specific place, authorized and allotted by the board for a designated beneficial purpose within the specific limits as to quantity, time, place and rate of diversion and withdrawal.

(2) The right to the use of water as specified in the permit, subject to the provisions of Section 51-3-5, including the construction of waterworks or other related facilities.

(h) "Watercourse" means any natural lake, river, creek, cut, or other natural body of fresh water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes without outlet to which only one (1) landowner is riparian.

(i) "Established minimum flow" means the minimum flow for a given stream at a given point thereon as determined and established by the commission when reasonably required for the purposes of this chapter. "Minimum flow" is the average streamflow rate over seven (7) consecutive days that may be expected to be reached as an annual minimum no more frequently than one (1) year in ten (10) years (7Q10), or any other streamflow rate that the commission may determine and establish using generally accepted scientific methodologies considering biological, hydrological and hydraulic factors. In selecting a generally accepted scientific methodology, the commission shall consult with and shall consider recommendations from the Department of Wildlife, Fisheries and Parks. In determining and establishing the minimum streamflow rates, the commission shall give consideration to consumptive and nonconsumptive water uses, including, but not limited to, agricultural, industrial, municipal and domestic uses, assimilative waste capacity, recreation, navigation, fish and wildlife resources and other ecologic values, estuarine resources, aquifer recharge and aesthetics.

(j) "Established average minimum lake levels" means the average minimum lake levels for a given lake as determined and established by the commission when reasonably required for the purposes of this chapter. The "average minimum lake level" is that level which shall not be expected to be reached as an average annual minimum no more frequently than one (1) year in ten (10) years, or such other minimum lake level that the commission may determine and establish using generally accepted scientific methodologies considering biological, hydrological and hydraulic factors. In selecting a generally accepted scientific methodology, the commission shall consult with and shall consider recommendations from the Department of Wildlife, Fisheries and Parks.

(k) "Board" means the Permit Board as created by Section 49-17-28.

(*l*) "Commission" means the Commission on Environmental Quality.

(m) "Mining of aquifer" means the withdrawal of groundwater from hydrologically connected water-bearing formations in a manner in excess of the standards established by the commission.

(n) "Groundwater" means that water occurring beneath the surface of the ground.

SOURCES: Codes, 1942, § 5956-02; Laws, 1956, ch. 167, 2; Laws, 1958, ch. 196, § 1; Laws, 1985, ch. 459, § 2; Laws, 1994, ch. 653, § 2; Laws, 1999, ch. 386, § 1, eff from and after June 30, 1999.

Cross References — Additional powers for beneficial use of water; provisions common to Drainage Districts and Swamp Land Districts, see § 51-33-11.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waters § 189.
CJS. 93 C.J.S., Waters §§ 247-249.

§ 51-3-5. Permit requirement; notice of preexisting rights or beneficial usage.

(1) No person who is not specifically exempted by this chapter shall use water without having first obtained a permit as provided herein and without having otherwise complied with the provisions of this chapter, the regulations promulgated hereunder and any applicable permit conditions.

(2) All persons having acquired a right to use surface water prior to April 1, 1985 are entitled to continue such use, provided that such right shall be contingent upon filing a notice of claim to such use with the commission on a

form promulgated by the commission. Any person who shall fail to file said notice within three (3) years of April 1, 1985 shall be deemed to have abandoned such use and the right to such use shall automatically terminate without further action of the board.

(3) Any person using groundwater prior to April 1, 1985 for a beneficial use shall be entitled to continue such use upon the filing with the commission of a notice of claim on a form promulgated by the commission within three (3) years from April 1, 1985. Any such person failing to file said notice of claim within the prescribed period shall be deemed to have abandoned such use and the right to such use shall automatically terminate without further action by the board.

(4) Notwithstanding rights as envisioned in subsections (2) and (3) of this section, all users of water shall continue to be subject to regulations promulgated by the commission regarding the use of surface water and groundwater for the benefit of the health and public welfare of citizens of this state.

(5) As soon as practicable after April 1, 1985, the board shall give notice to all persons affected by the provisions of subsections (2) and (3) of this section regarding the requirement to file the notices of claims mentioned therein. If the names and mailing addresses of such affected persons are available to the board, actual written notice, by certified mail, shall be given by the board. If such names and mailing addresses are not available to the board, notice shall be given by publication at least one (1) time per week for not less than three (3) consecutive weeks in one or more newspapers of general circulation in each county of the state.

SOURCES: Codes, 1942, §§ 5956-01, 5956-03; Laws, 1956, ch. 167, §§ 1, 3; Laws, 1962, ch. 218; Laws, 1985, ch. 459, § 3, eff from and after passage (approved April 1, 1985).

Cross References — Provision that right to use of water as specified in permit constitutes "permitted use," subject to the provisions of this section, see § 51-3-1.

Issuance of permit to person who files notice of preexisting rights, see § 51-3-9.

RESEARCH REFERENCES

ALR. Liability for diversion of surface water by raising surface level of land. 88 A.L.R.4th 891.

Am Jur. 78 Am. Jur. 2d, Waters §§ 20-25.

CJS. 94 C.J.S., Waters §§ 484-530.

§ 51-3-7. Exemptions from permit requirement; certain uses permissible.

(1) Notwithstanding the provisions of this chapter, a person using water for only domestic purposes shall not be required to obtain a permit to use water for domestic purposes, and no permit shall be required for the use of surface water in impoundments that are not located on continuous, free-flowing watercourses. No permit shall be required for any use of water obtained from a well with a surface casing diameter of less than six (6) inches; however, a

permit shall be required of a person in the business of developing real property for resale who desires to withdraw water from a well, regardless of surface casing diameter, that is to be used for maintaining or enhancing an impoundment of surface water primarily for aesthetic purposes. If the commission declares and delineates a water use caution area as provided in Section 51-3-11, the permit board may require permits for withdrawals of water in excess of twenty thousand (20,000) gallons per day, including withdrawals of water for uses exempted under this subsection.

(2) The board shall have the authority to permit the use of water of any stream only in excess of the established minimum flow as based upon records or computations by the commission. However, exceptions may be made for municipal users. The board may authorize any permittee to use the established minimum flow upon written assurance, supported by any data and reporting requirements that the board deems appropriate that the water will be immediately returned to the stream in substantially the same amount to insure the maintenance at all times of the established minimum flow. The board may authorize a permittee to use the established minimum flow for industrial purposes when the water shall be returned to the stream at a point downstream from the place of withdrawal, where the board finds that the use will not result in any substantial detriment to property owners affected thereby or to the public interest.

(3) The board shall have the authority to permit the use of water of any lake only in excess of the established average minimum lake level as based upon records or computations by the commission. However, exceptions may be made for municipal users. The board, upon affording a hearing to interested parties, may authorize any permittee to use below the established average minimum level when such use will not affect plans for the proper utilization of the water resources of the state, or the commission may establish a level above the established average minimum lake level, after affording an opportunity for a hearing, where plans for the proper utilization of the water resources of the state require it.

(4) No use of water shall be authorized that will impair the effect of stream standards set under the pollution control laws of this state based upon a minimum stream flow.

(5) No use of water shall be authorized or continued that will impair the navigability of any navigable watercourse.

(6) No use of water shall be permitted if the use shall cause mining of any aquifer unless the board shall find that the use is essential to the safety of human life and property or unless the applicant for a permit for such use can show to the satisfaction of the board that he or another person of sufficient financial capability has applied for permit or made any other definite commitment to a plan to acquire water from another source in lieu of the water being mined from the aquifer and which will not also result in mining of any other aquifer.

SOURCES: Codes, 1942, § 5956-04; Laws, 1956, ch. 167, § 4; Laws, 1958, ch. 196, § 2; Laws, 1962, ch. 219; Laws, 1966, ch. 268, § 1; Laws, 1978, ch. 437, § 1; Laws, 1985, ch. 459, § 4; Laws, 1987, ch. 523, § 8; Laws, 1995, ch. 505, § 2, eff from and after July 1, 1995.

Editor's Note — Laws of 1987, ch. 523, § 7, effective from and after July 1, 1987, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for fees or charges due or accrued under the Mississippi Economic Poison Law of 1950 or the Mississippi Fertilizer Law of 1970 prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment and collection fees due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Definition of "navigable waters," see § 1-3-31.

Provisions relative to pollution of waters, streams, and air, see § 49-17-1 et seq.

RESEARCH REFERENCES

ALR. Landowner's right to relief against pollution of his water supply by industrial or commercial waste. 39 A.L.R.3d 910.

Am Jur. 78 Am. Jur. 2d, Waters §§ 20-25.

20 Am. Jur. Legal Forms 2d, Waters, Forms 260:12 et seq. (water rights and interests in general).

CJS. 94 C.J.S., Waters §§ 484-530.

§ 51-3-9. Duration of permit; reissuance; termination.

(1) No permit for water use shall be issued for a period longer than ten (10) years. The right to use of water granted by the permit shall automatically terminate upon the passage of the tenth anniversary date of the permit unless there is pending before the board an application for another water permit which includes the use of the same water permitted under the expiring permit. Six (6) months prior to the tenth anniversary date of such permit, the board shall give actual written notice by certified mail to the permit holder informing him that such permit shall be automatically terminated upon its expiration unless such permit holder has made an application for another water permit as described in this subsection. The permit shall be reissued to the permit holder unless his continued use is found to be contrary to the public interest.

(2) Notwithstanding the foregoing provision, the board may grant to a municipality, county or other governmental subdivision, a public utility or a publicly regulated utility, a permit to use water for a duration sufficient to amortize the initial capital investment of such permittee in water-related equipment.

(3) The board may modify, terminate or decline to reissue a permit upon a showing of good cause, after affording the permittee involved an opportunity for a hearing at which the permittee shall be entitled to be represented by legal counsel and call witnesses and present evidence on his behalf.

(4) The board shall issue to any person filing a notice of claim to previously existing rights as provided in Section 51-3-5 a permit which reflects such person's rights. However, such person, on or before the tenth anniversary date of the permit so issued by the board, shall file an application to renew such permit or the rights thereunder to the use of water shall automatically terminate upon the expiration of the permit. This decennial filing requirement shall also apply thereafter to each renewed permit.

SOURCES: Codes, 1942, § 5956-05; Laws, 1956, ch. 167, § 5; Laws, 1985, ch. 459, § 5, eff from and after passage (approved April 1, 1985).

§ 51-3-11. Commission to issue water use warning or declare water use caution area; conditions warranting issuance; notice; plan to alleviate or correct; regulations.

(1)(a) The commission shall issue a water use warning or declare and delineate a water use caution area, if one (1) of the following conditions exist:

(i) The mining of an aquifer is occurring; or

(ii) Existing water resources, including surface water, groundwater, or both, are inadequate to meet present or reasonably foreseeable needs.

(b) In making a determination under this section, the commission shall use data developed through the application of generally accepted scientific methodologies.

(2)(a) If the commission determines that one (1) of the conditions in subsection (1) of this section exists and that time allows the development of a solution through cooperation between the commission, the department, local permit holders, political subdivisions and water management districts in the affected area, the commission shall issue a water use warning and may order the implementation of the reporting requirements in Section 51-3-23.

(b) Upon issuance of a water use warning, the commission shall send notice to all permit holders, political subdivisions and water management districts within the affected area. The notice shall describe the conditions requiring issuance of a water use warning, propose corrective measures and request the assistance of the permit holders, political subdivisions and water management districts in alleviating or correcting the conditions. The commission shall request in the notice voluntary compliance of the permit holders with any corrective measures proposed by the commission.

(c) The permit holders, political subdivisions and water management districts, in cooperation with the commission, shall develop and implement a plan for alleviating or correcting the conditions. If the commission determines that satisfactory progress is being made by the affected parties, the commission may extend the deadline or timetable for the development or implementation of a plan or may allow modification of the plan.

(3)(a) If the commission determines that one (1) of the conditions in subsection (1) of this section exists and that prompt and immediate action is required to protect the resource, the commission shall give notice of its intent to declare the need for establishment of a water use caution area. The notice and public hearing required by this subsection shall be made as provided in Sections 25-43-7(1) and 49-17-25. The notice shall delineate the proposed water use caution area, describe those proposed actions needed to protect the resource and recommend any additional permit requirements the commission deems necessary to address the conditions.

(b) Upon closing of the public hearing record and consideration of relevant comments on its proposed action, the commission may adopt an order establishing a water use caution area. If the commission orders the establishment of a water use caution area, the commission shall, within one hundred twenty (120) days following entry of the order, adopt regulations consistent with this chapter and commensurate with the necessary degree of control pursuant to its regulatory authority in Section 51-3-25.

SOURCES: Laws, 1995, ch. 505, § 1, eff from and after July 1, 1995.

Editor's Note — A former § 51-3-11 [Codes, 1942, § 5956-06; Laws, 1956, ch. 167, § 6] was repealed by Laws, 1985, ch. 459, § 6, eff from and after April 1, 1985. Such former section related to termination of water rights.

Section 25-43-7(1), referred to in this section, was repealed by Laws of 2003, ch. 304, § 26, effective July 1, 2005. Present provisions regarding notice of proposed rule adoption can be found in § 25-43-3.103.

§ 51-3-13. Consideration of applications; criteria.

Use of waters of the state shall not constitute absolute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use. It shall be the duty of the board to approve all applications made in such form as shall meet the requirements of this chapter and such rules and regulations as shall be promulgated by the board and which contemplate the utilization of water for beneficial purposes, within reasonable limitations, provided the proposed use does not prejudicially and unreasonably affect the public interest. If it is determined that the proposed use of the water sought to be permitted is not for beneficial purposes, is not consistent with standards established by the commission, or is detrimental to the public interest, it shall be the duty of the board to enter an order rejecting such application or requiring its modification.

SOURCES: Codes, 1942, § 5956-07; Laws, 1956, ch. 167, § 7; Laws, 1985, ch. 459, § 7, eff from and after passage (approved April 1, 1985).

JUDICIAL DECISIONS

1. Groundwater withdrawal permits.

Mississippi Department of Environmental Quality Permit Board did not err in granting groundwater withdrawal permits to a county utility authority because the factors it considered were reasonable, it made specific findings as to each factor, and its findings were supported by substantial evidence; the utility authority owned the land upon which it would install wells for the groundwater withdrawal and planned to use the water for public water supply, the highest-ranked beneficial use of water. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

Mississippi Department of Environmental Quality Permit Board's decision to grant groundwater withdrawal permits to a county utility authority did not violate a utility company's rights because the permits did not allow the utility authority to sell in the company's certificated area; the utility authority intended to expand its regional water system by building wells on land it owned in the company's certificated area and selling water to customers outside of the company's certificated area. Riverbend Utils., Inc. v. Miss. Envtl. Quality Permit Bd., 130 So. 3d 1096 (Miss. 2014).

§ 51-3-15. State Permit Board as permitting authority; powers; hearings.

(1) The board shall serve as the permitting authority for this chapter. The board may adopt rules of practice and procedure governing its proceedings and forms as it deems necessary consistent with the regulations of the commission to carry out its permitting duties under this chapter. The board, under any conditions as the board may prescribe, may authorize the Executive Director of the Department of Environmental Quality to make decisions on permit issuance, reissuance, denial, modification and revocation. A decision by the executive director shall be a decision of the board and shall be subject to formal hearing and appeal as provided in Section 49-17-29. The executive director shall report all permit decisions to the board at its next regularly scheduled meeting and those decisions shall be recorded in the minutes of the board.

(2) The board may:

(a) Issue or reissue any permit under those conditions and limitations consistent with the regulations of the commission and as it reasonably deems necessary to effectuate the purposes of this chapter.

(b) Issue or reissue any temporary or emergency permit for any period of time specified by the board where conditions make a temporary or emergency permit essential.

(c) Modify or revoke any permit upon not less than sixty (60) days' written notice to the permittee affected.

(d) Revoke any permit as the board deems appropriate for failure to adhere to permit conditions.

(e) Deny the issuance, reissuance or modification of any permit if the proposed use is found to be contrary to public interest.

(f) Delegate authority to any joint water management district to receive, investigate and make recommendations to the board regarding applications for permits required under this chapter.

(g) Require all abandoned bore holes and wells more than twenty-five (25) feet deep to be properly plugged to prevent groundwater contamination.

(3) The board may hold a public hearing regarding its proposed action on any permit under this chapter as provided in Section 49-17-29. Any interested party aggrieved by an action of the board may appeal that action as provided in Section 49-17-29.

SOURCES: Codes, 1942, § 5956-08; Laws, 1956, ch. 167, § 8; Laws, 1958, ch. 196, § 3; Laws, 1978, ch. 484, § 36; Laws, 1985, ch. 459, § 8; Laws, 1998, ch. 400, § 1, eff from and after July 1, 1998.

Cross References — Licensing and regulation of water well drillers, see § 51-5-1 et seq.

Powers and duties relating to the development of the Region Bordering Pearl River, see § 51-9-5.

Pearl River Valley Water Supply District, in exercising functions of joint water management district, may apply to Environmental Quality Permit Board for delegation of powers and duties as provided by this section, see § 51-9-121.

Pearl River Basin Development District, in exercising functions of joint water management district, may apply to Environmental Quality Permit Board for delegation of powers and duties as provided by this section, see § 51-11-13.

Tombigbee River Valley Water Management District, in exercising functions of joint water management district, may apply to Environmental Quality Permit Board for delegation of powers and duties as provided by this section, see § 51-13-111.

§ 51-3-16. Bureau of land and water resources; duties and powers in assisting waterway, river basin and watershed authorities and districts.

The Bureau of Land and Water Resources through the Division of Regional Water Resources shall have the following duties and powers in assisting waterway, river basin and watershed authorities and districts:

(a) To offer such assistance as may be appropriate to the various authorities and districts, as set forth in Section 51-3-18, in the performance of any of their powers and programs;

(b) To keep the authorities and districts informed of the activities and experiences of all other such authorities and districts and to facilitate an interchange of experiences among such authorities and districts;

(c) To coordinate the programs of the various authorities and districts;

(d) To secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of such authorities and districts;

(e) To disseminate information throughout the state concerning the activities and programs of the various authorities and districts and to encourage the formation of such authorities and districts in areas where their organization is desirable;

(f) To seek and receive grants of monies, and other assets, from any legitimate sources for use in carrying out the purposes of this section;

(g) To distribute any appropriated or other funds or assets in its custody or under its control, from state, federal or other governmental agencies or political subdivisions thereof, or from private grants, appropriate in carrying out the purposes of this article, including matching funds to districts;

(h) To give guidance and overall supervision to districts when such assistance is requested, or acceptable;

(i) To provide technical assistance and information to the State Permit Board in the performance of its duties under this chapter;

(j) To receive, file and review permit applications and notices of claims and any other documents regarding water uses and rights;

(k) To serve as the repository for information gathered or filed under the provisions of this chapter.

SOURCES: Laws, 1978, ch. 484, § 38; Laws, 1985, ch. 459, § 9, eff from and after passage (approved April 1, 1985).

§ 51-3-17. Repealed.

Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979. [Codes, 1942, § 5956-09; Laws, 1956, ch. 167, § 9]

Editor's Note — Former § 51-3-17 provided for the organization and compensation of the board of water commissioners.

§ 51-3-18. Authorities and districts to receive assistance from Department of Environmental Quality.

The Department of Environmental Quality, through the Office of Land and Water Resources or a successor office, may provide water resources-related assistance to any authority or district created or established under this title.

SOURCES: Laws, 1978, ch. 484, § 39; Laws, 1985, ch. 459, § 10; Laws, 1997, ch. 403, § 1, eff from and after July 1, 1997.

Cross References — Provision that the Bureau of Land and Water Resources shall offer assistance to the various authorities and districts set forth in this section, see § 51-3-16.

§ 51-3-19. Repealed.

Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979. [Codes, 1942, § 5956-10; Laws, 1956, ch. 167, § 10]

Editor's Note — Former § 51-3-19 provided authority for employment of a water engineer.

§ 51-3-20. Repealed.

Repealed by Laws, 1985, ch. 459, § 11, eff from and after April 1, 1985. [En., Laws, 1978, ch. 484, § 40]

Editor's Note — Former § 51-3-20 provided for creation of a waterway, river basin, and watershed authorities council.

§ 51-3-21. State water management plan.

(1) The commission, through its Office of Land and Water Resources, shall proceed as rapidly as possible to study existing water resources in the state; means and methods of conserving and augmenting such waters; existing and

contemplated needs and uses of water for protection and procreation of fish and wildlife, irrigation, mining, power development, and domestic, municipal, and industrial uses; and all other related subjects, including drainage, reclamation, flood-plain or flood-hazard area zoning, and selection of reservoir sites. Not later than July 1, 1997, the commission shall formulate, as a functional element of a comprehensive state plan, an integrated, coordinated plan for the use and development of the waters of the state, based on the above studies. This plan, with such amendments, supplements and additions as may be necessary from time to time, shall be known as the "state water management plan."

(2) In the formulation of the state water management plan, the commission shall give due consideration to:

(a) The attainment of maximum beneficial use of water for such purposes as those referred to in subsection (1).

(b) The maximum economic development of the water resources consistent with other uses.

(c) The control of such waters for such purposes as environmental protection, drainage, flood control and water storage.

(d) The quantity of water available for application to a beneficial use.

(e) The prevention of wasteful, uneconomical, impractical or unreasonable uses of water resources, including free-flowing wells, existing or otherwise, regardless of size.

(f) Presently exercised domestic or exempted uses and permit rights.

(g) The preservation and enhancement of the water quality of the state and the provisions of the state water quality plan.

(h) The state water resources policy as expressed by this chapter.

(i) The allocation of surface water and groundwater in those situations in which the Governor has declared that an emergency situation exists which creates an imminent and substantial endangerment threatening the public health and safety or the lives and property of the people of this state.

(3) During the process of formulating or revising the state water management plan, the commission shall consult with and carefully evaluate the recommendations of concerned federal, state and local agencies, particularly the governing boards of the water management districts and local governments, and other interested persons. The commission may conduct such public meetings or hearings as it may deem necessary or appropriate to insure maximum public involvement in the formulation and adoption of the state water management plan.

(4) Each such governing board is directed to cooperate with the commission in conducting surveys and investigations of water resources, to furnish the commission with all available data of a technical nature, and to advise and assist the commission in the formulation and drafting of those portions of the state plan applicable to such water management district or local government.

(5) For the purposes of this plan the commission may, in consultation with the affected governing board, divide each water management district into sections which shall conform as nearly as practicable to hydrologically controllable areas and describe all water resources within each area.

(6) The commission shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The commission may prohibit or restrict other future uses on certain designated bodies of water which may be inconsistent with these objectives.

(7) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the permit board may deny a permit.

(8) The commission may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in the event of competing applications under the permitting system authorized by this chapter.

(9) The commission may add to the state water management plan any other information, directions or objectives it deems necessary or desirable for the guidance of governing boards or other agencies in the administration and enforcement of this chapter.

(10) The commission may delegate to any joint water management district authority to assist the commission in preparation, administration and implementation of the state water management plan, or any activity related thereto, in such district.

SOURCES: Codes, 1942, § 5956-11; Laws, 1956, ch. 167, § 11; Laws, 1985, ch. 459, § 12; Laws, 1992, ch. 396 § 5; reenacted and amended, Laws, 1995, ch. 584, § 4, eff from and after July 1, 1995.

Cross References — Pearl River Valley Water Supply District, in exercising functions of joint water management district, may apply to Miss. Commission on Environmental Quality for delegation of powers and duties as provided by this section, see § 51-9-121.

Pearl River Basin Development District, in exercising functions of joint water management district, may apply to Miss. Commission on Environmental Quality for delegation of powers and duties as provided by this section, see § 51-11-13.

Tombigbee River Valley Water Management District, in exercising functions of joint water management district, may apply to Miss. Commission on Environmental Quality for delegation of powers and duties as provided by this section, see § 51-13-111.

§ 51-3-23. Reporting requirements.

(1) Pursuant to regulations established by the commission, the commission may require any permit holder to file such reports as are deemed necessary or appropriate for proper water management.

(2) Notwithstanding the foregoing provisions, any person using in excess of twenty thousand (20,000) gallons per day may be required to file the reports as provided for in subsection (1) of this section.

SOURCES: Codes, 1942, § 5956-12; Laws, 1956, ch. 167, § 12; Laws, 1985, ch. 459, § 13, eff from and after passage (approved April 1, 1985).

Cross References — Commission, upon determination that proper conditions exist, may issue water use warning and order implementation of reporting requirements provided for in this section, see § 51-3-11.

RESEARCH REFERENCES

ALR. Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving logging, mining, and related projects. 74 A.L.R. Fed. 702.

Necessity and sufficiency of environmental impact statements under § 102(2)(C) of National Environmental Policy Act of 1969 (42 USCS § 4332(2)(C)) in cases involving hunting, fishing and related projects. 74 A.L.R. Fed. 852.

§ 51-3-25. Regulatory authority of commission.

The commission shall have the power to adopt, modify, repeal, promulgate and enforce, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from the rules and regulations which contain any of the following provisions as the commission finds appropriate concerning the regulation of surface water and groundwater:

(a) Provisions for making observations and measurements as will enable it to administratively determine and establish the rights of all water users who were making beneficial use of water prior to April 1, 1985, and who have filed a notice of claim;

(b) Provisions concerning the timing of withdrawals, provisions to protect against or abate saltwater encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use;

(c) Provisions concerning well depth and spacing controls and provisions establishing a range of prescribed static levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on actual proof of the capacities and characteristics of the aquifer;

(d) Provisions to minimize waste by requiring users to employ water conservation measures;

(e) Provisions concerning well design and standards, including provisions regarding technical upgrading requirements for existing permitted wells in water use caution areas; and

(f) Other provisions not inconsistent with this chapter as the commission finds necessary to implement the purposes of this chapter.

SOURCES: Codes, 1942, § 5956-13; Laws, 1956, ch. 167, § 13; Laws, 1978, ch. 437, § 2; Laws, 1985, ch. 459, § 14; Laws, 1995, ch. 505, § 3, eff from and after July 1, 1995.

Cross References — Commission, when ordering establishment of water use caution area, to adopt regulations pursuant to its regulatory authority in this section, see § 51-3-11.

Powers of flood and drainage control districts, see § 51-35-315.

ATTORNEY GENERAL OPINIONS

It is within the authority of Commission on Environmental Quality, as provided in this section, to prescribe regulations which set out conditions for the issuance of the written authorizations consistent with § 51-3-39. Such regulations may also allow for public input prior to the issuance of the written authorization and may provide that the written authorization be in the from of a permit. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

The Commission on Environmental Quality may, as a part of its regulatory authority in subsection (f) of this section, promulgate regulations regarding "high hazard dams", and require compliance therewith, for those dams which are exempted from the "written authorization" requirements of § 51-3-39(1)(a). Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

§ 51-3-27. Repealed.

Repealed by Laws, 1985, ch. 459, § 15, eff from and after April 1, 1985.
[Codes, 1942, § 5956-14; Laws, 1956, ch. 167, § 14]

Editor's Note — Former § 51-3-27 provided for the division of the state into water districts with reference to water resources.

§ 51-3-29. Unpermitted waters.

The following are hereby declared to constitute unpermitted waters:

(a) All water which has not been permitted prior to April 1, 1985;

(b) All surface water for which a permit had been issued prior to April 1, 1985, but for which no notice of claim has been filed by the expiration of three (3) years from April 1, 1985;

(c) All groundwater which was not subjected to use for a beneficial purpose on April 1, 1985;

(d) All water which having been used flows or seeps back or otherwise returns to a natural watercourse or waterbody, whether on the surface or underground.

SOURCES: Codes, 1942, § 5956-15; Laws, 1956, ch. 167, § 15; Laws, 1985, ch. 459, § 16, eff from and after passage (approved April 1, 1985).

§ 51-3-31. Application for permit; disposition of fees.

Any person desiring to use water for a beneficial purpose shall apply to the board for a permit for such use on a form prescribed by the board for such purpose. The application shall be accompanied by a fee of Ten Dollars ($10.00). Said application shall provide such information as deemed appropriate by the board to its decision to issue such permit.

All fees received by the board as herein prescribed shall be deposited in the General Fund of the state.

SOURCES: Codes, 1942, § 5956-16; Laws, 1956, ch. 167, § 16; Laws, 1985, ch. 459, § 17, eff from and after passage (approved April 1, 1985).

Cross References — Appropriation permits, see §§ 51-9-129, 51-13-119, 51-35-321.

§ 51-3-33. Duty of board as to application.

(1) Upon receipt of the application it shall be the duty of the board to have endorsed thereon the date of the receipt and to assign it a number. If upon examination the application is found to be defective, inadequate, or insufficient to enable the board to determine the place, nature and amount of the proposed use, it shall be returned for correction or completion or for other required information.

(2) All maps, plats, plans and drawings shall conform to prescribed uniform standards as to materials, size, coloring and scale as prescribed by the board, and shall show: (a) the source from which the proposed use is to be made; (b) all proposed pump locations, dams, dikes, reservoirs, canals, pipelines, powerhouses and other structures for the purpose of storing, conveying or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in acres. All maps, plats, plans, drawings, and applications submitted shall become the property of the board.

SOURCES: Codes, 1942, § 5956-17; Laws, 1956, ch. 167, § 17; Laws, 1985, ch. 459, § 18, eff from and after passage (approved April 1, 1985).

§ 51-3-35. Approval of application.

(1) Upon approval of the application the board shall notify the applicant to that effect and issue a permit authorizing him to take all steps required to apply the water to the approved and proposed beneficial use. An application may be approved for a less amount of water than that requested if, in the opinion of the board, the approval of the full amount requested would interfere with a vested right or is against public interest. An applicant shall be entitled to proceed with construction and with the use of water in accordance with the approval and such limitations as may be prescribed by the board. No application shall be approved until the substance thereof shall have been published by the applicant in a newspaper having general circulation in the county wherein the point of diversion or withdrawal exists, at least ten (10) days before approval of such application, and a public hearing accorded any person whose rights may be adversely affected by such approval. At such hearing all persons concerned will be accorded the right of counsel and the right to introduce evidence in their behalf.

(2) If the application is refused the board shall so notify the applicant, and it shall be unlawful for such applicant to take any steps toward the use of any such water, so long as the refusal shall continue in force. Any person who proceeds to use water, without approval of the board being first obtained, may be enjoined in any court of competent jurisdiction.

SOURCES: Codes, 1942, § 5956-18; Laws, 1956, ch. 167, § 18; Laws, 1985, ch. 459, § 19, eff from and after passage (approved April 1, 1985).

§ 51-3-37. Repealed.

Repealed by Laws, 1985, ch. 459, § 20, eff from and after April 1, 1985. [Codes, 1942, § 5956-19; Laws, 1956, ch. 167, § 19]

Editor's Note — Former § 51-3-37 provided for the issuance of a license upon completion of construction of diversion works.

§ 51-3-39. Construction, modification, and inspection of dams and reservoirs.

(1) Any person proposing to construct, enlarge, repair or alter a dam or reservoir in this state except as provided elsewhere in this section, before proceeding with the construction thereof, must obtain written authorization from the board. Applications shall be made on forms provided by the board, and detailed plans shall be required when deemed necessary by the board in order to determine whether the proposed construction will provide adequate safety for downstream lives and property, and will not adversely affect downstream water rights or plans for the proper utilization of the water resources of the state. Provided further, that:

(a) Written construction authorization shall not be required for any dam or barrier to impound water which (i) is a peripheral dam or barrier of eight (8) feet or less in height, measured from the point of lowest elevation of the toe of the dam or barrier, regardless of impounded storage volume, (ii) impounds twenty-five (25) acre-feet or less at maximum storage volume, or (iii) which does not impound a watercourse with a continuous flow of water.

(b) Any person who seeks to build and maintain a dam on any watercourse lying in whole or in part within a levee district duly constituted under the laws of this state shall first obtain permission from the levee board of such levee district.

(c) Any person intending to acquire the right to store or use water from a reservoir formed by a dam on a watercourse regardless of whether or not written construction authorization therefor was required under this section, may do so only by making an application for a permit as provided elsewhere in this chapter.

(2) The board may request other agencies, or contract with consultants, to recommend land treatment or facilities necessary to prevent pollution of the waters of this state, or to protect the safety and general welfare of the people, and in the board's discretion, may require that these recommendations be followed before authorization to construct or modify the dam is issued, or order the removal of the dam after it has been constructed or request the commission to order the removal of the dam after it has been constructed or modified when such recommendations are not followed.

(3) The board and commission shall be authorized to make inspections of dams and reservoirs, regardless of whether or not written construction authorization therefor was required under this section, for the purpose of determining their safety, and shall require owners to perform at their expense

such work as may be necessary for maintenance and operation which will safeguard life and property. Provided, however, a dam or reservoir may be exempt from inspections when the commission determines that the location, size or condition is such that lives and property will not be endangered. In carrying out the provisions of this section, the board and commission are authorized to expend available state funds, to receive funds from federal agencies, to contract with consultants and/or other agencies, and the commission may issue orders to owners of dams or reservoirs found to be unsafe requiring them to take the prescribed remedial action to safeguard downstream lives and property.

(4) No dam or reservoir, regardless of whether or not written construction authorization therefor is required under this section, may be constructed in such a manner as to impair the common law or other lawful rights of water users below or plans for the proper utilization of the water resources of the state. The board is authorized to prescribe such minimum flow releases from any dam or reservoir as may be found necessary to protect downstream users or otherwise prudently manage available surface water.

(5) When the board or commission finds a dam or reservoir constructed or modified in violation of this chapter or that the owner of a dam or reservoir has allowed the structure to deteriorate and remain in an unsafe condition after having been ordered to make the necessary repairs, then the commission may cause the structure to be removed and/or the board may revoke or modify any other authorization pertaining thereto.

(6) The provisions of this section shall not be construed as creating any liability for damages against the state and/or against its officers, agents and employees.

(7) The provisions of this section shall apply also to a county board of supervisors when constructing dams or low-water control structures on lakes or bodies of water in accordance with the provisions of Section 19-5-92.

SOURCES: Codes, 1942, § 5956-20; Laws, 1956, ch. 167, § 20; Laws, 1978, ch. 437, § 3; Laws, 1985, ch. 459, § 21; Laws, 2001, ch. 476, § 5, eff from and after passage (approved Mar. 23, 2001.)

Editor's Note — Laws of 2001, ch. 476, § 6, provides:

"SECTION 6. Nothing in this act shall be construed to require the prior approval of a levee board for the repair or construction of flood control structures in areas that are not located in a levee district area."

Amendment Notes — The 2001 amendment added (7).

Cross References — Penalties for violation of this section, see § 51-3-55.

ATTORNEY GENERAL OPINIONS

It is within the authority of Commission on Environmental Quality, as provided in § 51-3-25, to prescribe regulations which set out conditions for the issuance of the written authorizations consistent with this section. Such regulations may also allow for public input prior to the issuance of the written authorization and may provide that the written authorization be in the from of a permit. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

The Commission on Environmental Quality may, as a part of its regulatory authority in § 51-3-25(f), promulgate regulations regarding "high hazard dams", and require compliance therewith, for those dams which are exempted from the "written authorization" requirements of subsection (1)(a) of this section. Chisolm, Oct. 15, 2004, A.G. Op. 04-0493.

RESEARCH REFERENCES

ALR. Applicability of rule of strict or absolute liability to overflow or escape of water caused by dam failure. 51 A.L.R.3d 965.

Liability for diversion of surface water by raising surface level of land. 88 A.L.R.4th 891.

Am Jur. 78 Am. Jur. 2d, Waters §§ 266 et seq.

CJS. 93 C.J.S., Waters §§ 315 et seq.

§ 51-3-40. Repealed.

Repealed by Laws, 1985, ch. 459, § 22, eff from and after April 1, 1985. [En Laws, 1978, ch. 437, § 5]

Editor's Note — Former § 51-3-40 exempted certain dams constructed on private property from the provisions of this chapter.

§ 51-3-41. Compacts and agreements.

The commission shall have authority to negotiate and recommend to the Legislature compacts and agreements concerning this state's share of ground water and waters flowing in watercourses where a portion of those waters are contained within the territorial limits of a neighboring state.

SOURCES: Codes, 1942, § 5956-21; Laws, 1956, ch. 167, § 21; Laws, 1985, ch. 459, § 23; Laws, 1995, ch. 505, § 4, eff from and after July 1, 1995.

§ 51-3-43. Right of entry upon public or private lands.

Any member of the board, the commission or any person authorized by either shall have the right to enter upon private or public lands for the purpose of inspecting waterworks, making surveys or conducting tests or examinations necessary for the gathering of information on water resources or uses, subject to responsibility for any damage done to property entered.

SOURCES: Codes, 1942, § 5956-22; Laws, 1956, ch. 167, § 22; Laws, 1985, ch. 459, § 24, eff from and after passage (approved April 1, 1985).

§ 51-3-44. Disclosure; confidentiality claim; violation, penalty.

(1) No person may be required to disclose any trade secret, including any formula, process or methods used in any manufacturing operation or any confidential information concerning business activities.

(2) The provisions of the Mississippi Public Records Act shall govern any request to have the commission declare information confidential, subject to specific provisions of this section.

(3) No confidentiality claim or determination of confidentiality shall prevent disclosure of the information to authorized department or federal employees.

(4) Information submitted to the commission containing any trade secret, including any formula, process or methods used in any manufacturing operation or any confidential information concerning business activities, specifically identified as confidential by the applicant and which is not essential for any public review as determined by the commission, shall be kept confidential by the department if:

(a) A written confidentiality claim is made when the information is supplied; and

(b) The confidentiality claim is determined by the commission, after hearing, to be valid.

If the confidentiality claim is denied, the information will not be released until the party claiming confidentiality has withdrawn its claim or has exhausted its administrative remedies. During the pendency of the proceedings the department shall not in any way use the contested information.

(5) Any public officer or employee who violates this subsection is guilty of a misdemeanor and, upon conviction, shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment.

SOURCES: Laws, 1995, ch. 505, § 5, eff from and after July 1, 1995.

Cross References — Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

§ 51-3-45. Changes in approved diversion.

(1) The board may consider, approve, modify at the request of the applicant, or reject applications for permanent or temporary changes in the place of diversion or withdrawal or use of water from those originally approved, subject to the rules and regulations of the board and following the procedure herein established for original application for permit.

(2) Any person who changes or attempts to change the point or place of diversion or withdrawal or use of water, either permanently or temporarily, without first applying to the board in the manner prescribed, shall obtain no right thereby and shall be guilty of a misdemeanor and punished therefor, in the discretion of the court, not to exceed a fine of Two Hundred Dollars ($200.00). Each day of such unlawful change shall constitute a separate offense, separately punishable.

(3) Each application for a temporary or permanent change shall be accompanied by a fee of One Dollar ($1.00). All fees received by the board as herein prescribed shall be deposited in the General Fund of the state.

SOURCES: Codes, 1942, § 5956-23; Laws, 1956, ch. 167, § 23; Laws, 1985, ch. 459, § 25, eff from and after passage (approved April 1, 1985).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 51-3-47. Water rights adjudicated by court.

Whenever the rights for the use of waters within the state shall have been adjudicated by any court, the board shall aid in the distribution of water in accordance with the terms of the decree; and it shall be the duty of the clerk of any court in which such decree has been issued, within ten (10) days after such decree shall have been entered, to forward to the board and commission, by registered mail, a certified copy of the decree.

SOURCES: Codes, 1942, § 5956-24; Laws, 1956, ch. 167, § 24; Laws, 1985, ch. 459, § 26, eff from and after passage (approved April 1, 1985).

§ 51-3-49. Appeal from order of board or commission.

In addition to any other remedies that might now be available, any person or interested party aggrieved by an order of the commission or of the permit board shall have the right to perfect an appeal to the appropriate chancery court in the manner set forth in Sections 49-17-41 and 49-17-29.

SOURCES: Codes, 1942, § 5956-25; Laws, 1956, ch. 167, § 25; Laws, 1985, ch. 459, § 27, eff from and after passage (approved April 1, 1985).

§ 51-3-51. Hearing procedures.

The procedures whereby the commission or an employee thereof may obtain a hearing before the commission on a violation of any provisions of this chapter, including a violation of the terms and conditions of any water permit issued by the board, or of a regulation or of any order of the commission or whereby any interested person may obtain a hearing on matters within the jurisdiction of the commission or a hearing on any order of the commission shall be as prescribed in Sections 49-17-31 through 49-17-41. Further, all proceedings before the permit board shall be conducted in the manner prescribed by Section 49-17-29.

SOURCES: Codes, 1942, § 5956-26; Laws, 1956, ch. 167, § 26; Laws, 1985, ch. 459, § 28, eff from and after passage (approved April 1, 1985).

§ 51-3-53. Repealed.

Repealed by Laws, 1978, ch. 484, § 37, eff from and after July 1, 1979.
[Codes, 1942, § 5956-27; Laws, 1956, ch. 167, § 27]

Editor's Note — Former § 51-3-53 pertained to reports to be furnished to the legislature.

§ 51-3-55. Enforcement authority; penalties; injunctive relief.

(1) It shall be the duty of the Commission on Natural Resources to serve as the enforcement agency for the Permit Board when the board determines that the sanctions available to it are not sufficient to achieve compliance with the provisions of this chapter. In such cases the board shall notify the commission of such noncompliance or violation and request that the commission take appropriate action. A member of the commission or an employee of the commission may also make such a request.

(2) Any person who knowingly submits false or inaccurate information in support of a permit application or a notice of claim or who wilfully fails to comply with the conditions of a permit issued by the board or who wilfully violates orders issued by the commission shall, upon conviction, be guilty of a misdemeanor and fined not less than One Hundred Dollars ($100.00) within the discretion of the court. Each day in which such violation exists or continues shall constitute a separate offense.

(3) In addition to or in lieu of filing a criminal complaint, the commission may impose a civil penalty not more than Twenty-five Thousand Dollars ($25,000.00) for each such offense, such penalty to be assessed and levied by the commission after a hearing as provided herein.

(4) Appeals from the imposition of the civil penalty may be taken to the chancery court in the same manner as appeals from orders of the commission. If the appellant desires to stay the execution of a civil penalty assessed by the commission, he shall give bond with sufficient resident sureties of one or more guaranty or surety companies authorized to do business in this state, payable to the State of Mississippi, in an amount equal to double the amount of any civil penalty assessed by the commission, as to which the stay of execution is desired, conditioned, if the judgment shall be affirmed, to pay all costs of the assessment entered against the appellant.

(5) In lieu of, or in addition to, the penalty provided in subsection (3) of this section, the commission shall have power to institute and maintain in the name of the state any and all proceedings necessary or appropriate to enforce the provisions of Sections 51-3-1 through 51-3-55, rules and regulations in force pursuant thereto, and orders and permits issued under those sections, in the appropriate circuit, chancery, county or justice court of the county in which venue may lie. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment to life or property, it shall not be necessary in such cases that the state plead or prove: (a) That irreparable damage would result if the injunction did not issue; (b) that there is no adequate remedy at law; or (c) that a written complaint or commission order has first been issued for the alleged violation.

(6) Commission hearings on the imposition of the above prescribed civil penalty or other sanctions shall be conducted as prescribed in Sections 49-17-31 through 49-17-41.

SOURCES: Laws, 1978, ch. 437, § 4; Laws, 1985, ch. 459, § 29, eff from and after passage (approved April 1, 1985).

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Propriety of injunctive relief against diversion of water by municipal corporation or public utility. 42 A.L.R.3d 426.

ARTICLE 3.

MISSISSIPPI WATER RESOURCES COUNCIL.

SEC.
51-3-101 through 51-3-105. Repealed
51-3-106. Repeal of sections 51-3-101 through 51-3-105.
51-3-107. Repealed.

§§ 51-3-101 through 51-3-105. Repealed.

Repealed by operation of law, Laws of 2007, ch. 541 § 7, effective July 1, 2009.

§ 51-3-101. [Laws, 1992, ch. 545 § 1; reenacted and amended, Laws, 1995, ch. 584, § 1; reenacted without change, Laws, 1999, ch. 479, § 1; reenacted without change, Laws, 2003, ch. 358, § 1; reenacted without change, Laws, 2007, ch. 541, § 1, eff from and after July 1, 2007.]

§ 51-3-103. [Laws, 1992, ch. 545 § 2; reenacted and amended, Laws, 1995, ch. 584, § 2; reenacted and amended, Laws, 1999, ch. 479, § 2; reenacted and amended, Laws, 2003, ch. 358, § 2; reenacted without change, Laws, 2007, ch. 541, § 2, eff from and after July 1, 2007.]

§ 51-3-105. [Laws, 1992, ch. 545 § 3; reenacted and amended, Laws, 1995, ch. 584, § 3; reenacted without change, Laws, 1999, ch. 479, § 3; reenacted and amended, Laws, 2003, ch. 358, § 3; reenacted without change, Laws, 2007, ch. 541, § 3, eff from and after July 1, 2007.]

Editor's Note — Former § 51-3-101 created the Mississippi Water Resources Advisory Council.

Former § 51-3-103 related to council membership, terms of office, officers and general administration.

Former § 51-3-105 required the council to report on the status of the state's water resources.

§ 51-3-106. Repeal of sections 51-3-101 through 51-3-105.

Sections 51-3-101 through 51-3-105 shall stand repealed after July 1, 2009.

SOURCES: Laws, 1995, ch. 584, § 5; Laws, 1999, ch. 479, § 4; Laws, 2003, ch. 358, § 4; Laws, 2007, ch. 541, § 4, eff from and after July 1, 2007.

§ 51-3-107. Repealed.

Repealed by Laws, 1995, ch. 584, § 6, eff from and after July 1, 1995.
[Laws, 1992, ch. 545 § 4]

Editor's Note — Former § 51-3-107 provided the repeal date for §§ 51-3-101 through 51-3-105, which is now in § 51-3-106.

CHAPTER 4

Mississippi Scenic Streams Stewardship Act

Sec.

51-4-1. Title and citation of chapter.
51-4-3. Definitions.
51-4-5. Public policy declared.
51-4-7. Establishment; administration by Department of Wildlife, Fisheries and Parks; eligibility for designation as scenic stream.
51-4-9. Nomination and designation as scenic stream.
51-4-11. Notice of designation; development of cooperative voluntary stewardship plan; protection of private property rights.
51-4-13. Existing or future uses of scenic stream not prohibited.
51-4-15. Implementation of policies and practices of chapter.
51-4-17. Pilot programs.
51-4-19. No right of public access created by this chapter.
51-4-21. Eligibility of portion of Magee's Creek for nomination to Program.
51-4-21.1. Eligibility of portion of Tangipahoa River for nomination to Program.
51-4-21.2. Eligibility of portions of Chunky Creek and Chunky River for nomination to Program.
51-4-21.3. Eligibility of portion of Pascagoula River for nomination to Program.
51-4-21.4. Eligibility of portion of Bear Creek for nomination to Program.
51-4-21.5. Eligibility of portions of Red Creek for nomination to Program.
51-4-21.6. Eligibility of portions of Escatawpa River for nomination to Program.
51-4-21.7. Eligibility of portions of Tombigbee River for nomination to Program.
51-4-21.8. Eligibility of portions of Bogue Chitto River for nomination to Program.
51-4-21.9. Eligibility of portions of Noxubee River for nomination to Program.
51-4-23. Designation of portion of Wolf River as State Scenic Stream.
51-4-23.1. Designation of portion of Tangipahoa River as State Scenic Stream.
51-4-23.2. Designation of portion of Magee's Creek as State Scenic Stream.
51-4-23.3. Designation of portion of Chunky Creek and Chunky River as State Scenic Streams.
51-4-23.4. Designation of portion of Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties as State Scenic Stream.
51-4-23.5. Designation of portion of Pascagoula River as State Scenic Stream.
51-4-23.6. Designation of portion of Bear Creek as State Scenic Stream.
51-4-23.7. Designation of portion of Red Creek as State Scenic Stream.
51-4-23.8. Designation of portion of Tombigbee River as State Scenic Stream.
51-4-23.9. Designation of portion of Noxubee River as State Scenic Stream.
51-4-23.10. Designation of portion of Escatawpa River as State Scenic Stream.

§ 51-4-1. Title and citation of chapter.

This chapter may be cited as the "Mississippi Scenic Streams Stewardship Act."

SOURCES: Laws, 1999, ch. 381, § 1, eff from and after July 1, 1999.

Editor's Note — A prior Chapter 4 [En Laws, 1976, ch. 474, §§ 1-10] was repealed by Laws, 1988, ch. 312, § 4, eff. from and after July 1, 1988. That section pertained to groundwater.

§ 51-4-3. Definitions.

Except as otherwise required by the context:

(a) "Department" means the Department of Wildlife, Fisheries and Parks.

(b) "Stream" means any free-flowing stream or segment of stream that is a public waterway under Section 51-1-4, Mississippi Code of 1972, and has not been channelized within the last five (5) years.

SOURCES: Laws, 1999, ch. 381, § 2, eff from and after July 1, 1999.

§ 51-4-5. Public policy declared.

The Legislature finds that certain selected streams and stream segments of this state possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values. It is the policy of the Legislature to provide for the protection of these streams and to conserve the state's natural heritage for the benefit and enjoyment of present and future generations, while preserving the private property rights of riparian landowners.

There is a necessity for a rational balance between the use of these streams and the conservation of the natural beauty along these streams. The Legislature finds that this balance will best be achieved through a nonregulatory voluntary stewardship program emphasizing local education, participation and support. The primary goal of the program is to maximize voluntary private conservation efforts and to build and maintain a sense of stewardship among stream users and riparian landowners. To accomplish this goal, the program must provide a nonregulatory framework to obtain cooperative, voluntary management agreements with riparian landowners to maintain scenic values while ensuring the rights of riparian landowners to continue customary uses along the stream.

SOURCES: Laws, 1999, ch. 381, § 3, eff from and after July 1, 1999.

§ 51-4-7. Establishment; administration by Department of Wildlife, Fisheries and Parks; eligibility for designation as scenic stream.

(1) There is hereby created the State Scenic Streams Stewardship Program. The department shall coordinate the program. The department shall establish and publish minimum criteria for assessing a stream's eligibility for the State Scenic Streams Stewardship Program. To qualify as eligible, the stream must possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values. The level of pollution of a stream's waters must be considered in determining eligibility for qualification as a scenic stream. A stream with relatively polluted waters may qualify as eligible as a scenic stream if other values are considered outstanding.

(2)(a) The department shall inventory and evaluate Mississippi streams and identify the streams or stream segments which possess unique or outstanding scenic, recreational, geological, botanical, fish, wildlife, historic or cultural values based on the criteria established under this section.

(b) Any Mississippi organization, resident, state agency or local government may request the department to evaluate a stream.

(3) If the department determines that a stream meets the eligibility criteria, the department may recommend to the Legislature that a stream or stream segment be listed as eligible for nomination to the State Scenic Streams Stewardship Program. In order for a stream to be listed as eligible for nomination to the State Scenic Streams Stewardship Program, the recommendation must be filed as a bill and must be adopted by the Legislature.

SOURCES: Laws, 1999, ch. 381, § 4, eff from and after July 1, 1999.

§ 51-4-9. Nomination and designation as scenic stream.

(1) After the eligibility assessment of a stream is completed by the department, and the Legislature enacts legislation approving the eligibility, the stream may be nominated as provided in this section. The department, through the executive director, shall establish an advisory council for that stream. The advisory council must be appointed as early as possible to assist the work of the department. Each council must consist of members who represent a broad range of interest in the vicinity of the eligible stream and shall include, but not be limited to, at least one (1) member from the department, local government, agricultural interests, forestry interests, business interests, conservation interests, recreational interests and riparian landowners who shall constitute a majority of the council. The advisory council shall elect a chairman. The advisory council shall assist and advise the department concerning the nomination of the stream for the program.

(2) The department shall hold a public meeting in the vicinity of the eligible stream proposed for nomination to the State Scenic Streams Stewardship Program. This public meeting must be conducted before any action by the department to nominate the eligible stream for inclusion in the State Scenic Streams Stewardship Program. The purpose of this meeting is to receive public comments concerning the proposed nomination of the eligible stream. Notice of this meeting must be published at least thirty (30) days before the meeting in a newspaper having general circulation in each county containing or bordering the eligible stream under study and in a newspaper having general circulation in the state. The department shall notify, in writing, the landowners along the eligible stream. The department and the advisory council shall consider the public comments in its decision whether to nominate the stream.

(3) Following the public meeting and after consideration of the public comments, the department and the advisory council may nominate the eligible stream for designation as a scenic stream and inclusion in the program. In order for a stream to be listed as eligible for nomination to the State Scenic Streams Stewardship Program, the nomination must be filed as a bill and

adopted by the Legislature. No stream shall be designated as a scenic stream and placed in the program until the Legislature has duly enacted legislation designating the stream as scenic and placing it in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 1999, ch. 381, § 5, eff from and after July 1, 1999.

§ 51-4-11. Notice of designation; development of cooperative voluntary stewardship plan; protection of private property rights.

(1) After the Legislature has designated a stream as a state scenic stream, the department shall publish a notice of the designation and provide written notice to the affected units of local government and landowners. Notice of the designation also must be published in a newspaper of general circulation in the state to apprise interested parties of the opportunities under this chapter. The notice must describe the boundaries of the stream or stream segment.

(2)(a) The department and the advisory council shall develop a cooperative voluntary stewardship plan for the scenic stream. The department shall consult and cooperate with the State Soil and Water Conservation Commission and the State Forestry Commission in developing the stewardship options utilizing current best management practices. Any other affected state agency may also make recommendations to the department. The plan shall identify current and traditional uses along the stream and outline goals, objectives and action strategies to address the management of resources along the stream.

(b) The plan shall utilize best management practices to maintain the scenic values of the stream while ensuring the rights of riparian landowners to continue existing agriculture, forestry, water supply, recreational, commercial and industrial uses and any other uses identified in the plan.

(3)(a) The plan shall provide several stewardship options for a landowner. The options shall vary in length of commitment, degree of involvement and enforceability. An option may be modified to meet the needs of a landowner based on the individual attributes of the stream.

(b) Participation in the stewardship plan is voluntary. A landowner is under no obligation to participate in the plan. A participating landowner must give at least thirty (30) days' notice of his intent to terminate a nonbinding option and to withdraw from the program.

(4)(a) The department may receive by gift, devise, grant or dedication, conservation easements or other interest in real property for the State Scenic Streams Stewardship Program.

(b) If any land is donated to the state for the Scenic Streams Stewardship Program and the land ceases to be used in the program, the title to the land reverts to the donor.

(5) Any lands placed in the State Scenic Streams Stewardship Program may be obtained only from private or corporate owners voluntarily. Land

placed in the State Scenic Streams Stewardship Program shall not be obtained by eminent domain.

SOURCES: Laws, 1999, ch. 381, § 6, eff from and after July 1, 1999.

§ 51-4-13. Existing or future uses of scenic stream not prohibited.

This chapter shall not be construed to prohibit, restrict or otherwise affect any existing or future lawful use or activity in or related to the scenic streams area. This chapter also shall not be construed to prohibit, restrict or otherwise affect the operation, maintenance or new construction of any facility, road, railroad, bridge, utility, pipeline, crossing or any other structure in or related to the scenic stream area. In the event there is any conflict between this section and any other provision in this chapter, this section shall control.

SOURCES: Laws, 1999, ch. 381, § 7, eff from and after July 1, 1999.

§ 51-4-15. Implementation of policies and practices of chapter.

(1) The department shall administer this chapter and may promulgate regulations for the specific powers granted under this chapter. In the process of administering the Scenic Streams Stewardship Program, the department shall consider, protect and ensure protection of the rights of private ownership and of the voluntary participants in the Scenic Streams Stewardship Programs.

(2) The department may enter into agreements with local, state and federal agencies, and private landowners, for the mutual management of a scenic stream. An agency which has administrative jurisdiction over lands or interests in land along a state scenic stream must assist the department to implement the policies and practices of this chapter.

SOURCES: Laws, 1999, ch. 381, § 8, eff from and after July 1, 1999.

§ 51-4-17. Pilot programs.

(1) The department is authorized to conduct a pilot program for the following streams designated as eligible for inclusion in the State Scenic Streams Stewardship Program:

(a) Wolf River in Pearl River, Hancock, Stone and Harrison Counties beginning at Mississippi Highway 26 in Pearl River County to the Bay of St. Louis in Harrison County;

(b) Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties beginning at Mississippi Highway 589 in Lamar County to the Pascagoula River in Jackson County;

(c) Okatoma Creek in Simpson and Covington Counties beginning at the Illinois Central Gulf Railroad in Simpson County to the Bowie River in Covington County;

(d) Strong River in Smith, Rankin and Simpson Counties beginning at the confluence of Beech Creek in Smith County to the Pearl River in Simpson County;

(e) Pearl River in Winston and Neshoba Counties beginning at the origin, confluence of Nanih Waiya Creek and Bogue Chitto Creek in Winston County to MS Highway 15 in Neshoba County; and

(f) Buttahatchie River in Monroe and Lowndes Counties beginning at the Mississippi-Alabama state line in Monroe County to U.S. Highway 45 in Lowndes County.

(2) The department shall follow the requirements in this chapter for the nomination of these streams to the State Scenic Streams Stewardship Program. The department shall report annually to the Legislature on the status of the pilot program.

(3) Any landowner entering into a binding agreement for the management of lands in a pilot project shall be eligible for any subsequent incentives that are offered for participation in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 1999, ch. 381, § 9, eff from and after July 1, 1999.

Cross References — Designation of portion of the Wolf River as State Scenic Stream, see § 51-4-23.

§ 51-4-19. No right of public access created by this chapter.

This chapter does not confer upon any member of the public the right to the use of or access to private lands within the boundary of a designated scenic stream area and any unauthorized use is trespass and subject to the penalties provided for trespass offenses.

SOURCES: Laws, 1999, ch. 381, § 10, eff from and after July 1, 1999.

§ 51-4-21. Eligibility of portion of Magee's Creek for nomination to Program.

In accordance with Section 51-4-7, Magee's Creek in Walthall County from the confluence of Varnell Creek to the Bogue Chitto River is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2000, ch. 308, § 1, eff from and after passage (approved Mar. 17, 2000.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.

§ 51-4-21.1. Eligibility of portion of Tangipahoa River for nomination to Program.

In accordance with Section 51-4-7, Tangipahoa River in Pike County beginning at U.S. Highway 51 and extending to the Mississippi-Louisiana state line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2000, ch. 310, § 1, eff from and after passage (approved Mar. 26, 2000.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.

§ 51-4-21.2. Eligibility of portions of Chunky Creek and Chunky River for nomination to Program.

In accordance with Section 51-4-7, Chunky Creek in Newton County from the confluence of Chunky Creek and Tallasher Creek, and the Chunky River in Newton, Lauderdale and Clarke Counties to the junction with the Chickasawhay River in Clarke County, are designated as eligible for nomination to the state Scenic Streams Stewardship Program.

SOURCES: Laws, 2002, ch. 431, § 1, eff from and after passage (approved Mar. 20, 2002.)

§ 51-4-21.3. Eligibility of portion of Pascagoula River for nomination to Program.

In accordance with Section 51-4-7, the Pascagoula River from the confluence of the Chickasawhay and Leaf Rivers in George County to its mouth in Jackson County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 459, § 1, eff from and after passage (approved Apr. 29, 2004.)

Editor's Note — This section was originally codified as § 51-4-23.5, but has been renumbered as § 51-4-21.3 at the direction of Codification Counsel.

§ 51-4-21.4. Eligibility of portion of Bear Creek for nomination to Program.

In accordance with Section 51-4-7, a loop of Bear Creek in Tishomingo County from the Mississippi-Alabama state line where it enters Mississippi to the Mississippi-Alabama line where it reenters Alabama is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 459, § 2, eff from and after passage (approved Apr. 29, 2004.)

Editor's Note — This section was originally codified as § 51-4-23.6, but has been renumbered as § 51-4-21.4 at the direction of Codification Counsel.

§ 51-4-21.5. Eligibility of portions of Red Creek for nomination to Program.

In accordance with Section 51-4-7, Red Creek from Mississippi Highway 26 in Stone County to its confluence with Black Creek in Jackson County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 321, § 1, eff from and after passage (approved Mar. 14, 2005.)

Cross References — Designation of portions of Red Creek as State Scenic Stream, see § 51-4-23.7.

§ 51-4-21.6. Eligibility of portions of Escatawpa River for nomination to Program.

In accordance with Section 51-4-7, the Escatawpa River from the Alabama/Mississippi state line in George County to its confluence with the Pascagoula River in Jackson County is designated as eligible for nomination to the state Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 337, § 1, eff from and after passage (approved Mar. 14, 2005.)

§ 51-4-21.7. Eligibility of portions of Tombigbee River for nomination to Program.

In accordance with Section 51-4-7, the Tombigbee River flowing through Itawamba County is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2006, ch. 349, § 1, eff from and after passage (approved Mar. 13, 2006.)

§ 51-4-21.8. Eligibility of portions of Bogue Chitto River for nomination to Program.

In accordance with Section 51-4-7, the Bogue Chitto River from the confluence with Boone Creek in Lincoln County to the Mississippi-Louisiana state line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 313, § 1, eff from and after passage (approved Mar. 12, 2007.)

§ 51-4-21.9. Eligibility of portions of Noxubee River for nomination to Program.

In accordance with Section 51-4-7, the Noxubee River in Noxubee County from the Oktibbeha County Line to the Mississippi-Alabama line is designated as eligible for nomination to the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 403, § 1, eff from and after passage (approved Mar. 15, 2007.)

§ 51-4-23. Designation of portion of Wolf River as State Scenic Stream.

The Wolf River in Pearl River, Hancock, Stone and Harrison Counties from Highway 26 in Pearl River County to the Bay of St. Louis in Harrison County, which was initially designated as eligible for inclusion in the scenic stream program under Section 51-4-17, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2000, ch. 309, § 1, eff from and after passage (approved Mar. 17, 2000.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.

Pilot program for Wolf River's eligibility for inclusion in State Scenic Streams Stewardship Program, see § 51-4-17.

§ 51-4-23.1. Designation of portion of Tangipahoa River as State Scenic Stream.

In accordance with Section 51-4-9, the Tangipahoa River in Pike County beginning at U.S. Highway 51 and extending to the Mississippi-Louisiana state line, which was designated as eligible for nomination to the scenic streams stewardship program under Section 51-4-21.1, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2001, ch. 346, § 1, eff from and after passage (approved Mar. 11, 2001.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.

Nomination and designation as scenic stream, see § 51-4-9.

Eligibility of portion of Tangipahoa River for nomination to State Scenic Streams Stewardship Program, see § 51-4-21.1.

§ 51-4-23.2. Designation of portion of Magee's Creek as State Scenic Stream.

Magee's Creek in Walthall County from the confluence of Varnell Creek to the Bogue Chitto River which was designated as eligible for nomination to the scenic streams stewardship program under Section 51-4-21, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2002, ch. 358, § 1, eff from and after passage (approved Mar. 18, 2002.)

§ 51-4-23.3. Designation of portion of Chunky Creek and Chunky River as State Scenic Streams.

Chunky Creek in Newton County from the confluence of Chunky Creek and Tallasher Creek, and the Chunky River in Newton, Lauderdale and Clarke Counties to the junction with the Chickasawhay River in Clarke County, which were designated as eligible for nomination to the state Scenic Streams Stewardship Program under Section 51-4-21.2, are designated as state scenic streams and are included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2003, ch. 350, § 1, eff from and after passage (approved Mar. 12, 2003.)

§ 51-4-23.4. Designation of portion of Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties as State Scenic Stream.

Black Creek in Lamar, Forrest, Perry, Stone, George and Jackson Counties from Mississippi Highway 589 in Lamar County to its confluence with the Pascagoula River, which was designated as eligible for nomination under Section 51-4-17, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2004, ch. 402, § 1, eff from and after passage (approved Apr. 22, 2004.)

§ 51-4-23.5. Designation of portion of Pascagoula River as State Scenic Stream.

In accordance with Section 51-4-7, the Pascagoula River from the confluence of the Chickasawhay and Leaf Rivers in George County to its mouth in Jackson County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.3, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 367, § 1, eff from and after passage (approved Mar. 15, 2005.)

§ 51-4-23.6. Designation of portion of Bear Creek as State Scenic Stream.

A loop of Bear Creek in Tishomingo County from the Mississippi-Alabama state line where it enters Mississippi to the Mississippi-Alabama state line where it re-enters Alabama, which was designated as eligible for nomination under Section 51-4-21.4, is designated as a state scenic stream and is included in the Mississippi Scenic Streams Stewardship Program.

SOURCES: Laws, 2005, ch. 351, § 1, eff from and after passage (approved Mar. 14, 2005.)

§ 51-4-23.7. Designation of portion of Red Creek as State Scenic Stream.

In accordance with Section 51-4-7, Red Creek from Mississippi Highway 26 in Stone County to its confluence with Black Creek in Jackson County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.5, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2006, ch. 407, § 1, eff from and after passage (approved Mar. 15, 2006.)

Cross References — Eligibility of portions of Red Creek for nomination to State Scenic Streams Stewardship Program, see § 51-4-21.5.

§ 51-4-23.8. Designation of portion of Tombigbee River as State Scenic Stream.

In accordance with Section 51-4-7, the Tombigbee River flowing through Itawamba County, which was designated as eligible for nomination to the State Scenic Streams Stewardship Program under Section 51-4-21.7, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2007, ch. 448, § 1, eff from and after passage (approved Mar. 26, 2007.)

Editor's Note — Eligibility for designation as scenic stream, see § 51-4-7.
Nomination and designation as scenic stream, see § 51-4-9.
Eligibility of portions of Tombigbee River for nomination to Program, see § 51-4-21.7.

§ 51-4-23.9. Designation of portion of Noxubee River as State Scenic Stream.

In accordance with Section 51-4-7, the Noxubee River in Noxubee County from the Oktibbeha County line to the Mississippi-Alabama line, which was designated as eligible for nomination to the State Scenic Streams Stewardship

Program under Section 51-4-21.9, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2008, ch. 411, § 1, eff from and after passage (approved Mar. 31, 2008.)

Cross References — Eligibility for designation as scenic stream, see § 51-4-7.
Nomination and designation as scenic stream, see § 51-4-9.
Eligibility of portions of Noxubee River for nomination to Program, see § 51-4-21.9.

§ 51-4-23.10. Designation of portion of Escatawpa River as State Scenic Stream.

In accordance with Section 51-4-7, the Escatawpa River from the Alabama-Mississippi state line in George County to its confluence with the Pascagoula River in Jackson County which was designated as eligible for nomination to the state Scenic Streams Stewardship Program under Section 51-4-21.6, is designated as a state scenic stream and is included in the State Scenic Streams Stewardship Program.

SOURCES: Laws, 2009, ch. 395, § 1, eff from and after passage (approved Mar. 18, 2009.)

Cross References — Eligibility for designation as scenic stream generally, see § 51-4-7.
Nomination and designation as scenic stream generally, see § 51-4-9.
Eligibility of portions of Escatawpa River for nomination to program, see § 51-4-21.6.

CHAPTER 5

Subsurface Waters; Well Drillers

Sec.	
51-5-1.	Water well contractor's license; fee; expiration and renewal; continuing education requirements; license exemption.
51-5-3.	Qualifications for license.
51-5-5.	Powers of Mississippi Commission on Environmental Quality to carry out provisions of this chapter.
51-5-7.	Violations of chapter or regulations.
51-5-9.	Proceedings for revocation of license.
51-5-11.	Grounds for revoking license.
51-5-13.	Driller to keep records and file reports.
51-5-15.	Advisory committee.
51-5-17.	Penalties.
51-5-19.	Chapter supplementary to other laws and regulations.

§ 51-5-1. Water well contractor's license; fee; expiration and renewal; continuing education requirements; license exemption.

(1) Every person, firm and corporation desiring to engage in the business of drilling and developing wells for underground water, including drilling any wells or boreholes that may penetrate water-bearing formations, in the State of Mississippi, shall file an application with the Mississippi Commission on Environmental Quality (commission) for a water well contractor's license, using forms prepared by the commission, setting out qualifications therefor and providing such other information, including test scores from any examination, oral or written, as may be required by the commission. Developing wells shall include the installation and servicing of pumps and well equipment, but shall not include the installation and servicing of above-ground pumps. The fee for such license and renewal thereof shall be One Hundred Dollars ($100.00) for each year.

(2) All licenses shall expire on June 30 of each year. Licenses shall not be transferable or assignable. A license may be renewed and shall be renewable without examination for the ensuing year by making an application not later than the expiration date, providing certification that the required continuing education units have been completed, and paying the applicable fee. Such application shall have the effect of extending the validity of the current license until the new license is issued or until the applicant is notified by the commission that the request for renewal has been denied. If an application has not been received by the commission by the expiration date, the license will expire and the licensee will be prohibited from performing any work for which the license is required until such time as the license has been reinstated. On application made after June 30 of each year, the license may be reinstated only upon compliance with all requirements for renewal, including payment of the applicable fee, plus a penalty of Ten Dollars ($10.00) for each month or fraction thereof the application is delinquent. Failure to request reinstatement within

one (1) year after a license has expired may, in the discretion of the commission, be deemed a waiver of the licensee's right to reinstatement without examination; and if he should request reinstatement thereafter, the commission may require that he be considered a new applicant subject to all requirements for initial licensing including the requirement for examination.

(3) Nothing in this chapter shall prevent a person who has not obtained a license pursuant thereto from constructing a water well on his own or leased property intended for use only in a single family house which is his permanent residence, or intended for use only for watering livestock on his farm, and where the waters to be produced are not intended for use by the public or any residence other than his own. However, such person shall comply with all rules and regulations as to the construction of wells as set out by the provisions of this chapter.

(4) Nothing in this chapter shall prevent a person who has not obtained a license pursuant thereto from constructing a water well on his own or leased property intended for use only for irrigating crops on his farm. However, such person shall comply with all rules and regulations as to the construction of wells as set out by the provisions of this chapter.

(5) This section shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed well contractor.

(6) Any person whose license has been revoked may, upon application for a new license, be required, in the discretion of the board, to take the examination and in all other ways be considered as a new applicant.

(7) As used in this chapter, the terms "State Board of Water Commissioners," "board" and "commission" mean the Mississippi Commission on Environmental Quality.

SOURCES: Codes, 1942, § 5956-31; Laws, 1966, ch. 269, § 1; Laws, 1978, ch. 371, § 1; Laws, 2010, ch. 411, § 1; Laws, 2011, ch. 355, § 1; Laws, 2014, ch. 369, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). The words "have such license" were changed to "having such license." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Commission on Environmental Quality generally, see § 49-2-5 et seq.

Water Resources Research Institute, see § 57-55-7.

ATTORNEY GENERAL OPINIONS

Pursuant to Section 51-5-1, the fee that the Commission of Environmental Quality can charge for an application, including examination, for a drilling license and for each year of renewal is $ 100; furthermore, the section contemplates that the examination fee be paid to the Commission thereby precluding applicants from paying a fee directly to a third party testing service. Chisolm, May 2, 2003, A.G. Op. 03-0191.

§ 51-5-3. Qualifications for license.

(1) In order to be licensed as a water well contractor in the State of Mississippi, the applicant must be qualified as set out below:

(a) Be at least twenty-one (21) years of age;

(b) Be of good moral character;

(c) Demonstrate to the satisfaction of the commission a reasonable knowledge of this chapter and the rules and regulations adopted by the commission under the provisions of this chapter;

(d) Possess the necessary drilling equipment, or present to the commission sufficient evidence to show that he has access to the use of such equipment at any time he needs it; and

(e) Have not less than three (3) years' experience in the work for which he is applying for a license.

(2) Each applicant shall be required to present to the examining committee three (3) notarized affidavits from licensed water well contractors showing that such applicant has the necessary qualifications and experience to meet the above-stated standards.

SOURCES: Codes, 1942, § 5956-32; Laws, 1966, ch. 269, § 2; Laws, 1985, ch. 459, § 31; Laws, 2010, ch. 411, § 2, eff from and after July 1, 2010.

Cross References — Commission on Environmental Quality generally, see § 49-2-5 et seq.

Commission as meaning the Commission on Environmental Quality, see § 51-5-1.

§ 51-5-5. Powers of Mississippi Commission on Environmental Quality to carry out provisions of this chapter.

(1) In carrying out the provisions of this chapter, the commission shall have, but shall not be limited to, the following powers:

(a) Make reasonable rules and regulations for the purpose of carrying out the provisions of this chapter.

(b) Prepare required forms and establish other procedures to govern the submission of applications, reports, and other information authorized to be sent the commission as required by this chapter.

(c) Prepare and give reasonable oral and/or written examinations for license applicants.

(d) Deposit all fees in a special fund for the implementation of this chapter.

(e) Enter upon and be given access to any premises for the purpose of inspecting water wells.

(f) Require and approve the completion of continuing education units for license renewal applicants.

(2) If the commission finds that compliance with all the requirements of this chapter would result in undue hardship, an exemption from any one or more of such requirements may be granted by the commission to the extent necessary to ameliorate such undue hardship and to the extent such exemption can be granted without impairing the intent and purpose of this chapter.

SOURCES: Codes, 1942, § 5956-33; Laws, 1966, ch. 269, § 3; Laws, 2010, ch. 411, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2). The words "an exemption from any one of more" were changed to "an exemption from any one or more." The Joint Committee ratifed the correction at its May 16, 2002, meeting.

Cross References — Commission on Environmental Quality generally, see § 49-2-5 et seq.

Commission as meaning the Commission on Environmental Quality, see § 51-5-1.

§ 51-5-7. Violations of chapter or regulations.

(1) When the state board of water commissioners has reasonable grounds for believing that there has been a violation of this chapter or any rules or regulations adopted pursuant thereto, the board shall give written notice to the person alleged to be in violation. Such notice shall identify the provisions of this chapter or regulation issued hereunder alleged to be violated and the facts alleged related thereto. Such notice shall be served in the manner required by law for the service of process upon a person in a civil action, and may be accompanied by an order of the board requiring described remedial action which, if taken within the time specified in such order, will effect compliance with the requirements of this chapter and regulations issued thereunder. Such order shall become final within thirty days from the service thereof unless a request for hearing as provided elsewhere in this chapter is made within such time. In lieu of such order the board may require the person or persons named in such notices to appear at a hearing at a time and place specified in the notice.

(2) When the state board of water commissioners finds that any provisions of this chapter have been violated and that disciplinary action by the board is insufficient or unavailable, then it shall be the duty of the said board to proceed with enforcement of this chapter by proper proceedings through any court of competent jurisdiction available therefor.

SOURCES: Codes, 1942, § 5956-34; Laws, 1966, ch. 269, § 4, eff from and after passage (approved June 10, 1966).

RESEARCH REFERENCES

ALR. Measure and element of damages for pollution of well or spring. 76 A.L.R.4th 629.

§ 51-5-9. Proceedings for revocation of license.

(1) When the board determines that the holder of any license issued pursuant to this chapter has violated any provisions thereof or any rules and regulations pursuant thereto, the board shall authorize suspension or revocation of such license. Proceedings under the provisions of this section shall not be dependent upon having exhausted remedies through any other section of this chapter.

(2) The board shall notify the suspected violator at least fifteen days before the board hearing therefor, shall specify to him the grounds for which such license revocation is proposed with such sufficiency as to protect his constitutional rights therein as in other civil hearings pertaining to license revocations, shall give him opportunity to present any witnesses or other reasonable evidence before the board, and shall comply with established rules of procedure for such board hearings.

(3) Any such order of revocation of license shall become effective thirty days after service thereof. The aggrieved party may appeal from the board's finding to a court of competent jurisdiction as provided by the laws of the state, provided notice of appeal is given to the board within ten days of such board action.

SOURCES: Codes, 1942, § 5956-35; Laws, 1966, ch. 269, § 5, eff from and after passage (approved June 10, 1966).

§ 51-5-11. Grounds for revoking license.

The grounds for revoking a well driller's license are:

(a) That he has intentionally made a material misstatement in the application for such license; or

(b) That he has willfully violated any provisions of this chapter; or

(c) That he has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(d) That he has been guilty of fraudulent or dishonest practices; or

(e) That he has demonstrated lack of competence as a driller of water wells; or

(f) That he has failed or refused to file reports as required under the provisions of this chapter; or

(g) That he has willfully and contumaciously refused to obey reasonable orders, rules, and regulations of the board.

SOURCES: Codes, 1942, § 5956-36; Laws, 1966, ch. 269, § 6, eff from and after passage (approved June 10, 1966).

§ 51-5-13. Driller to keep records and file reports.

The driller shall keep accurate records on each water well drilled, including, but not limited to, its location, depth, character of rocks or formations drilled, fluids encountered, and such other reasonable information as the board may specify. Each driller shall, within thirty days after completion of each well, file a report containing such information in the office of the state board of water commissioners on forms provided by the board. However, no report or information shall be required to be filed with the board if the well is a driven well or if it is dug by the use of a hand auger.

SOURCES: Codes, 1942, § 5956-37; Laws, 1966, ch. 269, § 7, eff from and after passage (approved June 10, 1966).

§ 51-5-15. Advisory committee.

(1) The board of water commissioners is hereby authorized to appoint an advisory committee to advise it, to make recommendations for the regulation and control of water well drillers as defined in this chapter, and to assist in examining applicants. This advisory committee shall consist of the following:

(a) The water engineer of the board of water commissioners.

(b) The state geologist.

(c) A registered professional engineer competent in water well design and construction.

(d) Five (5) water well contractors, licensed under the provisions of this chapter who shall be appointed from nominations submitted by the Mississippi Water Well Contractor's Association.

(2) The terms of appointment shall be as follows: The water engineer and state geologist shall be ex officio members. The registered professional engineer shall be appointed from the state-at-large for a term of five (5) years. The water well contractor members shall be appointed according to the congressional district in which they reside as follows: One (1) shall be appointed for a term of one (1) year, from the first congressional district; one (1) for a term of two (2) years, from the second congressional district; one (1) for a term of three (3) years, from the third congressional district; one (1) for a term of four (4) years, from the fourth congressional district; and one (1) for a term of five (5) years, from the fifth congressional district; thereafter, all such terms shall be for a period of five (5) years.

In the event of a vacancy on the advisory committee, a successor shall be appointed to fill the unexpired term. Those members whose terms expire shall continue to serve until their successor is appointed and qualifies.

(3) The advisory committee shall elect a chairman and vice chairman at its first meeting, and election of officers shall take place annually thereafter.

(4) The advisory committee shall meet at least quarterly at a time and place determined by the committee.

(5) The advisory committee members may be reimbursed for actual and necessary expenses incurred in the performance of their official activities. Such reimbursement shall be according to those policies adopted by the state auditor in such matters, and shall be approved by the board of water commissioners from fees paid under the provisions of this chapter.

SOURCES: Codes, 1942, § 5956-38; Laws, 1966, ch. 269, § 8; Laws, 1978, ch. 371, § 2, eff from and after passage (approved March 15, 1978).

Editor's Note — Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws, 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

ATTORNEY GENERAL OPINIONS

Appointments to this board should be reviewed under the last five-district plan which was in effect. Canon, Jan. 16, 2003, A.G. Op. #03-0016.

§ 51-5-17. Penalties.

Any person, firm, or corporation who engages in or follows the business or occupation, or advertises, holds itself out, or acts temporarily or otherwise as a well driller without having first secured the required license or renewal thereof, or who otherwise violates any provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00) within the discretion of the court; and each day in which such violation exists or continues shall constitute a separate offense.

In addition to the penalties prescribed herein, any person who violates any order of the board requiring described remedial action as set out elsewhere in this chapter, which shall specify a time requirement for compliance with such order, shall be subject to a penalty not to exceed one hundred dollars ($100.00) for each day such noncompliance continues.

SOURCES: Codes, 1942, § 5956-39; Laws, 1966, ch. 269, § 9, eff from and after passage (approved June 10, 1966).

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. Proof of Facts 3d 473, Liability for Dioxin Contamination.

§ 51-5-19. Chapter supplementary to other laws and regulations.

This chapter shall be supplementary to laws, rules, and regulations of the State of Mississippi, of any of its political subdivisions, and of any other state agencies or commissions, except insofar as such conflict may exist.

SOURCES: Codes, 1942, § 5956-40; Laws, 1966, ch. 269, § 10, eff from and after passage (approved June 10, 1966).

CHAPTER 7

Water Management Districts

In General 51-7-1
Apportionment and Distribution of Taxes 51-7-71

IN GENERAL

Sec.
51-7-1. Purpose of chapter.
51-7-3. Definitions.
51-7-5. Territory of districts.
51-7-7. Enlargement or reduction of district.
51-7-9. Content of petition.
51-7-11. Notice and hearing for creation of district.
51-7-13. Board of commissioners.
51-7-15. Development of plans.
51-7-17. Approval of plans.
51-7-19. Organization of district completed.
51-7-21. Subsequent projects.
51-7-23. Appeals.
51-7-25. Powers of commissioners.
51-7-27. Authority to borrow money and issue bonds.
51-7-29. Assessments.
51-7-30. Assessment of benefited lands outside of district.
51-7-31. Damages.
51-7-33. Acquisition of easements and rights of way.
51-7-35. Additional and existing districts.
51-7-37. Repealed.
51-7-39. Liability of commissioners.
51-7-41. Requirements for dissolution.
51-7-43. Dissolution procedure.
51-7-45. Dissolution hearing and order.
51-7-47. Outstanding claims.
51-7-49. Transfer of surplus funds of drainage districts.

§ 51-7-1. Purpose of chapter.

The purpose of this chapter is to provide for the creation of master water management districts for the carrying out in an orderly manner of works of improvement for the purposes of drainage, prevention of floodwater damage, or the conservation, development, utilization, and disposal of water, including the impoundment, diversion, flowage, and distribution of waters for recreation, beautification, welfare, and other beneficial use as defined in Sections 51-3-1 through 51-3-53. The authority herein granted to master water management districts shall be limited to plans for works of improvement developed and carried out in cooperation with the secretary of agriculture under the provisions of Public Law 566, 83rd Congress, as amended, or projects for any of the purposes provided for by this chapter which may be developed and carried out by or in cooperation with any agency or agencies of the United States government under other laws of the United States.

SOURCES: Codes, 1942, § 5956-101; Laws, 1960, ch. 175, § 1; Laws, 1966, ch. 270, §§ 1, 2, eff from and after passage (approved June 17, 1966).

Editor's Note — Section 51-3-53 referred to in this section was repealed by Laws of 1978, ch. 484, § 37, eff from and after July 1, 1978.

Cross References — Development of plans, see § 51-7-15.

RESEARCH REFERENCES

ALR. Conservation: validity, construction and application of enactments restricting land development by dredging or filling. 46 A.L.R.3d 1422.

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

§ 51-7-3. Definitions.

For the purposes of this chapter the following words and terms shall have these meanings:

(a) "Master water management district." A governmental subdivision of this state and a public body, corporate and politic, created under the provisions of this chapter for the purposes set forth in Section 51-7-1.

(b) "Drainage district." Any drainage district organized under the laws of this state.

(c) "Water management district." Any water management district created under the laws of this state.

(d) "Commissioner." Unless otherwise indicated, one of the members of the governing board of a master water management district.

(e) "Landowner" or "owner of land." Any person, firm, or corporation who shall hold legal or equitable title to any lands lying within a district organized under the provisions of this chapter.

(f) "Chancery court" or "chancellor." The chancery court or chancellor acting in term time or vacation.

SOURCES: Codes, 1942, § 5956-102; Laws, 1960, ch. 175, § 2, eff from and after passage (approved May 10, 1960).

§ 51-7-5. Territory of districts.

(1) Master water management districts may be organized from the territory of two or more existing drainage or water management districts, from the territory of parts of two or more of such existing districts, from territory in whole or in part of one or more of such existing districts and territory not now included in any such existing district, or from territory not now included in any drainage or water management district.

(2)(a) Whenever a proposed master water management district is to be composed of lands lying wholly within existing drainage or water management districts, whether or not such master water management district is to include all or parts of said existing districts, and the commissioners of such existing districts desire to form a master water management district, they shall petition the chancery court for the creation of such master water management district. Such petition shall be signed by the president or chairman and the secretary of the board of commissioners of each petitioning drainage or water management district; and there shall be affixed to said petition a certificate by the secretary of each such district, certifying that the execution of such petition by said officers in behalf of such drainage or water management district has been duly authorized by the commissioners thereof. Said petition shall be filed in the chancery court district in which the largest acreage of such proposed district is situated and in the county, or either of the judicial districts thereof, in such court district having the largest acreage in such court district.

(b) Whenever such proposed master water management district is composed of lands lying partly within and partly without one or more existing drainage or water management districts and the creation of such district is desired, a petition proposing the creation of such master water management district shall be filed in the chancery court; and such petition shall be signed by the president or chairman and secretary of the board of commissioners of each petitioning drainage or water management district as to the lands within each such district and by at least one half (½) of the landowners owning at least one third (⅓) of the lands or by at least one third (⅓) of the landowners owning at least one half (½) of the lands as to the lands not then within any such existing district, excluding lands owned by the state. There shall be affixed to said petition a certificate by the secretary of each such existing district, certifying that the execution of such petition in behalf of such drainage or water management district has been duly authorized by the commissioners thereof. Said petition shall be filed in the chancery court district in which the largest acreage of such proposed district is situated and in the county, or either of the judicial districts thereof, in such court district having the largest acreage in such court district.

(c) Whenever such proposed master water management district as composed of lands lying entirely without any existing drainage or water management district and the creation of such district is desired, a petition proposing the creation of such master water management district shall be filed in the chancery court; and such petition shall be signed by at least one half (½) of the landowners owning at least one third (⅓) of the lands or by at least one third (⅓) of the landowners owning at least one half (½) of the lands to be included within such district, excluding the lands therein owned by the state. Said petition shall be filed in the chancery court district in which the largest acreage of such proposed district is situated and in the county, or either of the judicial districts thereof, in such court district having the largest acreage in such court district.

(3) If the petition for creation of the master water management district includes any area lying in whole or in part within a levee district duly constituted under the laws of this state, there shall be attached to the petition a copy of a resolution adopted by the levee board of such levee district, approving the proposed petition for creation of the master water management district.

SOURCES: Codes, 1942, § 5956-103; Laws, 1960, ch. 175, § 3, eff from and after passage (approved May 10, 1960).

§ 51-7-7. Enlargement or reduction of district.

A master water management district may be enlarged in the same manner as provided by law for the organization of such district. The petition shall be filed by the commissioners of the master water management district who shall represent in such petition all water management districts therein.

A master water management district may be reduced in the same manner, by petition signed by its members and publication as provided for by Section 51-7-11.

SOURCES: Codes, 1942, § 5956-101; Laws, 1960, ch. 175, § 1; Laws, 1966, ch. 270, §§ 1, 2, eff from and after passage (approved June 17, 1966).

§ 51-7-9. Content of petition.

A petition for creation of a master water management district shall set forth the proposed name of the district, the necessity for the district, and a general description of the region intended to be embraced therein; and it shall pray for the organization of the district by the name proposed.

SOURCES: Codes, 1942, § 5956-104; Laws, 1960, ch. 175, § 4, eff from and after passage (approved May 10, 1960).

§ 51-7-11. Notice and hearing for creation of district.

Upon the filing of a petition for creation of a master water management district, and after fixing of the time, date, and place of hearing by the chancellor, the chancery clerk of the county wherein such petition is filed shall immediately publish a notice directed to the owners of land to be embraced in the proposed district, giving notice of the said petition and designating a date, not less than ten days nor more than twenty days after the last publication of notice, at which a hearing will be had on the petition. Said notice shall be published in a newspaper in each county wherein a part of such district is situated, such paper to have a general circulation in the area in said county wherein such portion of such district may be located, and said notice shall be published for three weeks in such newspaper. If there be no newspaper published in such county, then the notice provided herein shall be posted for not less than fifteen days, with one copy being posted on the bulletin board at the county courthouse and two copies posted at public places in the area proposed to be included in said master water management district. Said notice shall call upon landowners in such proposed district to show cause, if any, against establishment of such district, and such notice shall be in substantially the following form, to wit: "To all persons owning any interest in the following described lands, to wit: (with a description of the lands to be in subdivisions no smaller than quarter sections)."

Upon the date designated in the notice, or upon a subsequent day to which the matter may be continued, the chancery court shall hear all objections, if any are offered, to the organization of said district. Unless at the hearing at least one third (⅓) of the landowners owning at least one half (½) of the land proposed to be included in the district or at least one half (½) of the landowners owning at least one third (⅓) of the land proposed to be included in the district shall object to the organization, further proceedings shall be had as hereinafter provided; but the district shall not be organized in the event of such objection by at least one third (⅓) of the landowners owning at least one half (½) the land or by at least one half (½) of the landowners owning at least one third (⅓) of the land, excluding state-owned lands.

SOURCES: Codes, 1942, § 5956-105; Laws, 1960, ch. 175, § 5, eff from and after passage (approved May 10, 1960).

Cross References — Jurisdiction of chancery court generally, see § 9-5-81.

Authority of board of commissioners to borrow money and issue bonds, see § 51-7-27.

Tax assessments and levies, see § 51-7-29.

Acquisition of easements and rights of way, see § 51-7-33.

Dissolution of water management districts, see § 51-7-41 et seq.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

§ 51-7-13. Board of commissioners.

If the chancery court determines that any objections filed are not sufficient to defeat the organization of the district, and if it be determined by the chancery court to proceed with the organization of the proposed district, the chancery court shall enter an order appointing at least five commissioners who, as the board of commissioners of said master water management district, shall be its governing body. Each of said commissioners shall be a qualified elector of this state and a landowner in the territory proposed to be included in said district, and there shall be at least one such commissioner who is a landowner within each drainage district or water management district having territory in such master water management district and at least one who is a landowner within the territory to be included in such master water management district which is not within an existing drainage or water management district.

The term of office of commissioners of a master water management district shall be four years, except that in making the first appointments the chancery court shall appoint at least three commissioners for terms of one, two, and three years respectively, in order that the terms of all commissioners shall not expire at once; and each commissioner shall serve for the term for which he is appointed and until his successor has been appointed and has qualified. Subsequent appointments and appointments to fill vacancies in office shall be made by the chancery court in the court district of original jurisdiction in the creation of the master water management district. If a majority of the landowners in any such district or proposed district by number petition the court for the appointment of any particular qualified person, such person shall be appointed by the court, provided the requirements of the first paragraph of this section are fulfilled.

The commissioners shall take the oath of office required by section 268 of article 14 of the constitution of the state and shall give bond in the penalty of not less than five thousand dollars ($5,000.00) payable to the state for the use and benefit of the master water management district, such bond to be filed with and approved by the chancery clerk of the county in which the petition was filed. The commissioners shall immediately organize and select one of their number as president and another of their number as secretary for a term not to exceed four years. Commissioners shall receive compensation for their services at the rate of twelve dollars and fifty cents ($12.50) per diem provided for commissioners of drainage districts for time spent on the work of the board, in addition to their actual expenses, including traveling expenses, necessarily incurred in the discharge of their duties.

SOURCES: Codes, 1942, § 5956-105; Laws, 1960, ch. 175, § 5, eff from and after passage (approved May 10, 1960).

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 29, 30 et seq.

§ 51-7-15. Development of plans.

After appointment and organization proceedings as hereinbefore provided, the commissioners shall develop in conjunction with the United States Secretary of Agriculture, or with the head of such other federal agency as may be involved, plans for works of improvement within the scope of Section 51-7-1, which are to be carried out within or without the area of said master water management district. Whatever federal financial or other assistance is furnished in connection with the planning or construction of the proposed improvements, such plans and specifications shall be detailed only to the extent required by the federal department or agency responsible for furnishing such assistance. In connection with the development of such plans, the said commissioners, with approval of the chancery court, may incur expenses for engineering work, legal services, costs of publication and other administrative expenses, and other necessary preliminary expenses, including acquisition of easements and rights-of-way. For the payment of any such expenses the district may, with the approval of the chancery court, borrow money at a rate of interest not exceeding that allowed in Section 75-17-105, and issue negotiable notes or other evidences of indebtedness therefor, signed by the president and secretary of said board of commissioners, said notes or other evidences of indebtedness to be payable to the lender, or bearer, as said commissioners may elect. None of the said evidence of indebtedness so issued shall run for more than two (2) years, but they shall be subject to renewal for one (1) additional period up to two (2) years, and they shall be nontaxable. The commissioners may pledge all assessments on the land within the district made under provisions of this chapter for the payment of said evidences of indebtedness. Said obligations may be paid out of any general or special fund of the district, if organized, or out of the proceeds of the first assessments levied under this chapter. In the event said district is not organized after said indebtedness has been incurred, then the board of supervisors of the respective county or counties having territory or territories in such proposed district shall, on order of the chancery court, levy an acreage or an ad valorem tax against the lands embraced in said proposed district. If an ad valorem tax be levied, the board of supervisors may use for that purpose the assessments of the land according to the last assessment roll of the county in which said lands are situated; and in case the lands in the proposed district lie in more than one (1) county, then the chancery court shall apportion said indebtedness between the several counties, and the board of supervisors shall thereupon levy such apportioned tax upon the lands of their counties respectively, according to the ruling of the chancery court.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-106; Laws, 1960, ch. 175, § 6; Laws, 1966, ch. 270, § 3; Laws, 1972, ch. 529, § 1; Laws, 1983, ch. 494, § 16; Laws, 1985, ch. 477, § 7, eff from and after passage (approved April 8, 1985).

Federal Aspects — Provisions relative to the United States Secretary of Agriculture, see 7 USCS §§ 1011, 1932, and 2204.

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control § 32.

§ 51-7-17. Approval of plans.

As soon as said plans have been developed as hereinbefore provided, a report thereof shall be made by the commissioners, who shall file the same with the clerk of the chancery court. Such report shall include the approval thereof by the board of any levee district within which any master water management district shall be located in whole or in part. Such report shall contain an estimate of the local share of the cost of carrying out the works of improvement, together with an estimate of the total benefits that will accrue to the land in the proposed district. Upon the filing of said report and after fixing a time, date, and place of hearing by the chancellor, the clerk of the chancery court shall thereupon give notice by publication that a hearing will be held on said report and designating a date not less than twenty days and not more than thirty days after the last publication of notice on which such hearing will be held. Said notice shall be published in a newspaper in each county wherein a part of such district is situated, such newspaper to have a general circulation in the area in said county wherein such portion of such district may be located; and said notice shall be published for three weeks in such newspaper. If there be no newspaper published in such county, then the notice provided herein shall be posted for not less than fifteen days, with one copy being posted on the bulletin board at the county courthouse and two copies posted at public places in the area proposed to be included in the master water management district. The notice shall call upon landowners in the district to show cause, if any, against approval of the report by the chancery court.

SOURCES: Codes, 1942, § 5956-106; Laws, 1960, ch. 175, § 6; Laws, 1966, ch. 270, § 3, eff from and after passage (approved June 17, 1966).

§ 51-7-19. Organization of district completed.

At the time named in said notice, or on a subsequent date to which the cause may be continued, the chancellor shall hear all property owners within the district who wish to appear and advocate or resist the carrying out of the work plans as filed within said district, and if he deems it to the best interest of the owners of the real property within said district that said plans be adopted, or adopted as modified by the chancellor, under the provisions of this chapter, he shall make an order approving said report as submitted or as modified. Thereupon the organization of said master water management district shall be deemed to be fully completed, and henceforth the district shall be a governmental subdivision of the state and a public body, corporate and politic, with authority to do and perform in the name of such district all such acts and things for the accomplishment of the purposes for which it was organized. However, if the chancellor shall disapprove said report and shall decline to allow its modification or resubmission, then such district shall not be organized and the terms of office of the commissioners shall terminate, except as to powers which may be necessary in effecting payment of any preliminary indebtedness as provided in Section 51-7-15, except that such termination shall not become final until the expiration of the time for an appeal without an appeal having been taken or, in the event an appeal is taken, until final determination of the proceeding has been made by the courts.

If upon the hearing provided for in this section, a petition is presented to the chancery court, or the chancellor in vacation, signed by a majority of the landowners owning one-third (⅓) of the land, or, one-third (⅓) of the landholders owning a majority of the land, praying that the improvements be made, it shall be the duty of the court or chancellor to make the order establishing the district, without further inquiry, if it appear that the establishment thereof be necessary for the promotion of public health and for agricultural purposes. However, if upon that day a petition signed by a majority of the landowners owning one-third (⅓) of the land, or one-third (⅓) of the landowners owning a majority of the land, be presented praying that the improvements be not made, it shall be the duty of the court or chancellor to so order, but if no such petition is filed it shall be the duty of the court or chancellor to investigate and to establish such district if he is of the opinion the establishment thereof will be to the advantage of the owners of real property therein, and is for the public benefit. The petition provided for therein may be signed by women, whether married or single, owning land in the proposed district, guardians may sign for their wards, and trustees, executors and administrators may sign for the estate represented by them; if the signature of any corporation thereto is attested by the corporate seal, the same shall be sufficient evidence of the assent of the corporation to said petition.

SOURCES: Codes, 1942, § 5956-106; Laws, 1960, ch. 175, § 6; Laws, 1966, ch. 270, § 3; Laws, 1972, ch. 529, § 1, eff from and after passage (approved May 23, 1972).

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 6.

§ 51-7-21. Subsequent projects.

If the original plan was made only as to a part of the area within the master water management district, plans for any subsequent projects or works for the remaining area or any part thereof shall be submitted to the chancery court for approval in the manner provided herein, and all provisions and procedures of Sections 51-7-15 through 51-7-21 shall be applicable thereto, except that disapproval of such partial plans shall not terminate the organization of the district or the terms of office of the commissioners thereof.

SOURCES: Codes, 1942, § 5956-106; Laws, 1960, ch. 175, § 6; Laws, 1966, ch. 270, § 3, eff from and after passage (approved June 17, 1966).

§ 51-7-23. Appeals.

Any order of the chancery court in connection with a master water management district shall have the force of a judgment. Any owner of real property within the district or the board of commissioners may appeal from any such order to the supreme court within twenty days after said order has been made; but if no appeal is taken within that time, such order shall be deemed conclusive and binding.

SOURCES: Codes, 1942, § 5956-107; Laws, 1960, ch. 175, § 7, eff from and after passage (approved May 10, 1960).

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

§ 51-7-25. Powers of commissioners.

In addition to other powers provided in this chapter, the commissioners shall have power to adopt a seal of the district, which shall be judicially noticed; to fix the domicile of the master water management district; to make and execute contracts and other instruments necessary or convenient to the exercise of their powers; to adopt such rules and regulations as may be necessary for carrying out the purposes of the chapter and the purposes of the district, if not inconsistent with the laws and constitution of this state; to sue and be sued in the name of the district; to employ such engineers, legal counsel, or other persons as may be necessary in accomplishing the work of the district; to obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, or by the exercise of the power of eminent domain in the manner provided by the statutes of this state on eminent domain, any property, real or personal, or rights or interests therein reasonably necessary to carry out the purposes of this chapter; to maintain, administer, and improve any property acquired, to receive income from such properties, and to expend such income in carrying out the purposes and provisions of this chapter; to conduct surveys, investigations, and research necessary in carrying out the purposes of the chapter; to sell, lease, or otherwise dispose of any property or interests therein in furtherance of the purposes and provisions of this chapter; to construct, operate, and maintain works of improvement; to perform responsibilities in operating and maintaining all pre-existing works of improvement which, with the approval of the chancery court and the consent of the master water management district, may be turned over to such district; to accept, with approval of the chancery court, gifts and conveyances of land, easements, or rights of way owned by an existing drainage or water management district that are to be used by the master water management district for the purposes of the master water management district, on condition that the master water management district assume the responsibility for maintaining the works of improvement that are constructed on such lands, easements, or rights of way; to accept any moneys or services for carrying out the purposes of the district; to cooperate or enter into agreements with any agency, governmental or otherwise, or any person, firm, or corporation in carrying out the purposes of this chapter; and to do any and all things which are not inconsistent with the laws or constitution of this state in carrying out the purposes for which such districts were created in connection with projects and works of improvement carried out under Public Law 566, 83rd Congress, as amended or under other laws of the United States.

SOURCES: Codes, 1942, § 5956-108; Laws, 1960, ch. 175, § 8, eff from and after passage (approved May 10, 1960).

Cross References — Eminent domain generally, see § 11-27-1 et seq.

Apportionment of taxes between counties lying in two or more districts, see § 51-7-71.

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 2.

CJS. 52B C.J.S., Levees and Flood Control § 24.

§ 51-7-27. Authority to borrow money and issue bonds.

For the purposes of carrying out the projects and responsibilities outlined herein, the board of commissioners shall have authority to borrow money at a rate of interest not exceeding that allowed in Section 75-17-105, to issue its bonds, notes or other evidences of indebtedness therefor in a principal amount not exceeding the total amount assessed against all the real property in the district under the provisions of this chapter. Such bonds shall be issued only with the approval of the chancery court and upon the same notice to landowners of the district given in the same manner as provided herein in Section 51-7-11, in connection with organization of the district. Such bonds, notes or other evidences of indebtedness shall bear a rate of interest not exceeding that allowed in Section 75-17-105, shall be issued in denominations of not less than Five Hundred Dollars ($500.00), shall be signed by the president of said master water management district and countersigned by the secretary; shall bear the seal of the district; may be made payable either within or without the state, to the persons or person to whom sold, or bearer, or bearer simply, at the discretion of the commissioners; may be validated in the manner provided by law for validation of bonds; may have attached interest coupons bearing the facsimile signatures of the president and secretary of the district; and shall be sold at public sale, subject to approval of the chancery court. If any protest against issuance of such bonds shall be filed, such protest shall be heard and determination made thereon by the chancery court; and appeals may be taken either by the commissioners or the person filing the protest from the judgment or order of the court, in the manner provided herein for other appeals from judgments or orders of the court in connection with said master water management districts.

If it is found to be beneficial to the district, the commissioners may, in their discretion, deliver bonds by groups instead of for the total bond issue, with interest payable from the delivery date instead of the issue date, the delivery being made for an amount of money estimated to be needed to finance the district's operation for a year.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-109; Laws, 1960, ch. 175, § 9; Laws, 1972, ch. 529, § 2; Laws, 1976, ch. 352, § 2; Laws, 1983, ch. 494, § 17; Laws, 1985, ch. 477, § 8, eff from and after passage (approved April 8, 1985).

§ 51-7-29. Assessments.

For the purposes of this chapter, including but not limited to the construction and maintenance of works of improvement, expenses of the board of commissioners, assessment of benefits, and for repayment of bonds and interest as provided herein, the commissioners of a master water management district shall have authority to assess the lands of the district in proportion to the benefits accruing to said lands; provided, however, that for the purpose of providing funds with which to clean out, restore, repair and rehabilitate the whole or any part of the drainage system of such district or for the purpose of cooperating with the United States or any agency thereof in such works, there may be imposed a uniform assessment by the commissioners of such master water management district or, upon resolution of said commissioners, by the commissioners of a drainage or subdrainage district on each acre of unsubdivided land lying within the master district and a uniform assessment by lot on subdivided land lying within the master district and the records required in this chapter shall show the amount of the assessment in lieu of the amount of benefits accruing to each tract. Taxes levied hereunder are hereby declared to be taxes for maintenance purposes and shall not diminish in any manner the amount of assessed benefits in any such district which is otherwise available for the payment of any outstanding bonds of such district.

The assessments provided for in this section may be made even though evidences of indebtedness have been issued or validated or both prior thereto, but the lien of the holders of any such indebtedness shall not be impaired thereby. No assessments shall be made against lands owned by the State of Mississippi or any political subdivision thereof, or lands owned by the United States of America or any agency thereof. Such assessment shall be made in such manner as to clearly show the name of the owner and the description of the lands against which the assessment is made. When the assessment has been made, the assessment roll shall be filed with the chancery clerk and notice of such assessment shall be given in the same manner that notice is given for other purposes as provided in Section 51-7-11. Such notice of assessment shall include the date which the chancellor has set for hearing of any protest of such assessment. Such protest shall affect only the assessment against the person or persons making the protest. The court on said date, or within thirty (30) days thereafter, shall pass upon the assessment roll; and he shall have the authority to approve the roll, order its revision, or modify same, within his discretion. After said roll has been approved by the court, copies thereof certified by the secretary of the board of commissioners shall be transmitted to the boards of supervisors and the tax collectors of the counties within which the lands of said master water management district are located, and the said boards of supervisors shall make the levy for taxes upon the said lands on said assessment roll on such percentage basis as is requested by the board of commissioners. If any landowners or the board of commissioners are aggrieved at any assessment approved by the chancellor, they shall have the right of appeal from the order of the chancellor as provided for under Section

51-7-23, but such appeal shall not stay the collection of any tax levied on such assessment. The tax collectors of the respective counties in which such lands are located shall collect the taxes at the regular times provided by law for the collection of real estate taxes, and shall remit such collections to the secretary of said district within thirty (30) days after expiration of the time provided for payment thereof. All provisions of law for the sale of land for delinquent ad valorem taxes shall be applicable in effecting collection of any delinquent taxes which may be due under provisions of this chapter, and suit may be maintained against any delinquent taxpayer hereunder in the manner provided by law. All liabilities and penalties pertaining to responsibilities and duties of the tax collector generally shall be applicable hereunder.

At any time within three (3) years after the completion of construction of improvements for which assessment has been made under the provisions hereof, or within six (6) months after the effective date of this section, whichever is later, any landowner or group of landowners upon whose lands the original assessment or benefits were improperly or erroneously made may file an action in the chancery court of proper jurisdiction requesting modification or removal of such assessments. Upon a hearing being had on such action the chancellor shall make such findings of fact as the evidence adduced may require and may either confirm the assessments as originally made or may order such changes therein as may be required so that the total cost of the works as constructed may be borne by those lands in the district actually benefited thereby in proportion to the benefits actually conferred thereon by such improvements except as otherwise provided in this section. Such order may be made even though evidences of indebtedness have been issued and validated prior thereto, but the lien of the holders of any such indebtedness shall not be impaired thereby.

SOURCES: Codes, 1942, § 5956-110; Laws, 1960, ch. 175, § 10; Laws, 1966, ch. 270, § 4; Laws, 1972, ch. 529, § 3(a); Laws, 1976, ch. 352, § 1; Laws, 1977, ch. 332, § 1; Laws, 1995, ch. 392, § 1, eff from and after passage (approved March 15, 1995).

Cross References — Apportionment of taxes between counties lying in two or more districts, see § 51-7-71.

§ 51-7-30. Assessment of benefited lands outside of district.

If the commissioners at any time either before or after the organization of the district find that other land not embraced within the boundaries of the district will be benefited by the proposed improvement or improvements already made, they shall assess the estimated benefit to such lands and shall specially report to the chancery court, or chancellor in vacation, the assessments which they have made on land beyond the boundaries of the district, as already established. It shall thereupon be the duty of the clerk of the chancery court to give notice by two (2) weekly insertions in a newspaper published in the county where such lands lie, describing the additional lands which have been assessed. The owners of real property so assessed shall be allowed not less than ten (10) days after the last required publication of such notice in which to file with the clerk of the chancery court in writing their protest against being so assessed, or included within the district. The chancery court, or chancellor in vacation, shall, within ninety (90) days, investigate the question whether the lands beyond the boundaries of the district so assessed by the commissioners will in fact be benefited by the making of the improvement, and from its finding in that regard, either the property owner or the commissioners may, within twenty (20) days, appeal to the supreme court. If the finding is in favor of the commissioners, the limits of the district shall be extended so as to embrace any lands that may be benefited by the making of the improvement.

SOURCES: Codes, 1942, § 5956-110(e); Laws, 1972, ch. 529, § 3(e), eff from and after passage (approved May 23, 1972).

§ 51-7-31. Damages.

In like manner of making assessments and at the same time and subject to the same rights of protest and appeal, the commissioners shall also assess and place opposite each tract of land on the assessment roll an estimate of all damages that will accrue to any landowner by reason of works or proposed works of improvement, including injury to lands taken or damaged; and when said commissioners return no assessment of damages as to any tract of land, it shall be deemed a finding by them that no damages will be sustained.

SOURCES: Codes, 1942, § 5956-110; Laws, 1960, ch. 175, § 10; Laws, 1966, ch. 270, § 4, eff from and after passage (approved June 17, 1966).

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control §§ 7, 8.

CJS. 52B C.J.S., Levees and Flood Control § 18.

§ 51-7-33. Acquisition of easements and rights of way.

The commissioners may, at any time after the organization of the district, acquire permanent easements and rights of way for constructing, clearing, improving, and maintaining channels, canals and ditches within the district, in accordance with the provisions of Section 51-29-39, insofar as such provisions may be applicable. It shall not be necessary to personally summon the landowners affected, but in lieu thereof notice may be given by publication in the same manner as provided by Section 51-7-11, on plans and specifications of the district filed with the chancery clerk. The findings of the court, or chancellor in vacation, shall be final and have the force and effect of a judgment, from which appeal may be taken within twenty (20) days to the supreme court of the state, either by the property owner or by the commissioners of the district.

In lieu of the method herein provided for acquiring land and making compensation for damages, the commissioners may at any time after the organization of the district acquire permanent easements and rights-of-way for constructing and maintaining works of improvement within or without the district boundaries, such works of improvement to include floodwater retarding structures, impoundment structures and construction and improvement of channels, canals and ditches, in accordance with the provisions of Section 51-29-39, insofar as such provisions may be applicable.

SOURCES: Codes, 1942, § 5956-110; Laws, 1960, ch. 175, § 10; Laws, 1966, ch. 270, § 4; Laws, 1972, ch. 529, § 3(c, d), eff from and after passage (approved May 23, 1972).

§ 51-7-35. Additional and existing districts.

(1) After the organization of a master water management district, no additional drainage or water management districts shall be organized so as to include any of the area within the boundaries of the master water management district, except with the consent of the master water management district.

(2) Existing drainage or water management districts are hereby authorized to petition the chancery court and, with its approval and the consent of the master water management district, to convey without consideration to the master water management district lands, easements, or rights of way that are to be used by the master water management district for any of the purposes of such district upon the condition that the master water management district assumes the responsibility for maintaining the works of improvement on such lands, easements, or rights of way. Such existing districts are further authorized to petition the chancery court and, upon its approval and with the consent of the master water management district, to transfer to the master water management district the responsibility for operation and maintenance of any pre-existing works of improvement that are not included in the plans for the project under said Public Law 566, or other law of the United States.

(3) Financial obligations of existing drainage or water management districts shall not be affected or impaired by the creation of a master water management district or by the transfer to such district by any drainage or water management district of lands, easements, or rights of way as herein provided; nor shall any liens upon the lands of any drainage or water management district be impaired by the creation of any master water management district.

(4) Powers of existing drainage or water management districts shall not be affected by the creation of any master water management district, except with respect to works of improvement included in the plans for the project under said Public Law 566, or other law of the United States.

SOURCES: Codes, 1942, § 5956-111; Laws, 1960, ch. 175, § 11, eff from and after passage (approved May 10, 1960).

§ 51-7-37. Repealed.

Repealed by Laws, 1980, ch. 440, § 28, eff from and after January 1, 1981.

[Codes, 1942, § 5956-112; Laws, 1960, ch. 175, § 12; Laws, 1966, ch. 270, § 5]

Editor's Note — Former § 51-7-37 related to contracts for construction or maintenance of works of improvement.

§ 51-7-39. Liability of commissioners.

No member of any board of commissioners of any master water management district shall be liable for any damages sustained by any one in the prosecution of the work under his charge, unless it shall be made to appear that he has acted with a corrupt and malicious intent.

SOURCES: Codes, 1942, § 5956-113; Laws, 1960, ch. 175, § 13, eff from and after passage (approved May 10, 1960).

§ 51-7-41. Requirements for dissolution.

Any master water management district which has no unmatured bonded indebtedness, and which has constructed no works of improvement or projects as set forth herein or which has completed all purposes for which it was created, may be dissolved by the chancery court which organized said district in the manner hereinafter provided, but the proceedings for its dissolution shall not be commenced within three years after the date of organization of such district.

SOURCES: Codes, 1942, § 5956-114; Laws, 1960, ch. 175, § 14, eff from and after passage (approved May 10, 1960).

§ 51-7-43. Dissolution procedure.

Whenever, after the expiration of the said period of three years, twenty-five landowners of any such district, or a majority of the landowners of any such district, excluding lands owned by the state, or any landowner or owners owning more than fifty percent (50%) of the total acreage of said district, excluding acreage owned by the state, shall sign and file with the clerk of the chancery court by which such district was organized a petition for the dissolution of such district, it shall be the duty of such clerk to give notice in the manner provided in Section 51-7-11 that a hearing will be held on such petition to dissolve such district. Such notice shall set the time and place in term time or vacation when the court shall consider said petition, and such notice shall command all interested persons to appear and show cause, if any they can, as to why such district should or should not be dissolved.

SOURCES: Codes, 1942, § 5956-114; Laws, 1960, ch. 175, § 14, eff from and after passage (approved May 10, 1960).

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Rule 81 of Mississippi Rules of Civil Procedure.

§ 51-7-45. Dissolution hearing and order.

On hearing, the chancery court shall hear the cause in the same manner as other causes in chancery, and shall dissolve or refuse to dissolve said district as shall appear in the best interests of the landowners, and shall enter an order accordingly. If an order of dissolution is entered, the court shall decree that no further expenses shall be incurred by the district, and all papers, records and documents of the district shall be deposited with the chancery court by the commissioners within fifteen days after said order. Costs of the dissolution proceeding in event of dissolution, including solicitors fees as might be allowed by the court, shall be assessed and taxed by the court to be collected in the same manner as other taxes and assessments of the district; but in event the district is not dissolved, all costs including solicitors fees shall be assessed against the petitioners.

SOURCES: Codes, 1942, § 5956-114; Laws, 1960, ch. 175, § 14, eff from and after passage (approved May 10, 1960).

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

§ 51-7-47. Outstanding claims.

Upon dissolution all powers of the district and its commissioners shall cease, except that any just claim, contract, or obligation shall not be impaired, and persons holding such claims shall, on notice of the dissolution as provided herein, file any such claim as they may have in the court; and the chancery court shall, upon the hearing for dissolution, pass upon such claims and order any assessment or levy as provided for other assessments to pay such claim in the event same shall be found justified, due, and owing by the district.

SOURCES: Codes, 1942, § 5956-114; Laws, 1960, ch. 175, § 14, eff from and after passage (approved May 10, 1960).

§ 51-7-49. Transfer of surplus funds of drainage districts.

Any drainage district organized under any laws of the State of Mississippi is hereby authorized to transfer to any master water management district created under this chapter, within which such drainage district is located, any surplus funds of such drainage district to be used for any lawful purpose for which such master water management district is authorized to use funds, including but not being limited to the payment of any costs incurred for engineering work, legal services, costs of publication and other administrative expenses, and any other necessary preliminary expenses.

The transfer of such funds is authorized to be made, in the discretion of the commissioners of any such drainage district involved, after the appointment, as provided by law, of commissioners for any such master water management district.

No funds shall be transferred under the provisions of this section that are needed and required to pay and retire bonds and interest due and owing by such district, or needed and required to pay debts and obligations previously incurred by said district and unpaid. If any part of such districts so transferring such funds is not embraced in the new master water management district, then such transferring district shall retain such funds as may be needed and necessary to service that part of said district not embraced in the master water management district.

SOURCES: Codes, 1942, § 5956-121; Laws, 1962, ch. 161, §§ 1-4.

Cross References — Master water management districts generally, see § 51-7-1 et seq.

Drainage districts generally, see § 51-31-1 et seq.

Flood control generally, see § 51-35-1 et seq.

APPORTIONMENT AND DISTRIBUTION OF TAXES

SEC.	
51-7-71.	Contracts between districts as to apportionment and distribution of taxes collected in counties lying in two or more districts.

§ 51-7-71. Contracts between districts as to apportionment and distribution of taxes collected in counties lying in two or more districts.

The governing bodies of the several water management districts and waterway districts heretofore or hereafter organized under authority of law in the State of Mississippi are authorized and empowered to negotiate and contract with each other in the apportionment and distribution of tax proceeds accruing from ad valorem taxes authorized the several districts under authority of law, from a county which lies within two or more such water management or waterway districts.

SOURCES: Codes, 1942, § 5956-211; Laws, 1964, ch. 248, eff from and after passage (approved April 30, 1964).

CHAPTER 8

Joint Water Management Districts

Sec.
51-8-1. Creation of joint water management district; petition to existing district.
51-8-3. Purpose of district.
51-8-5. Local government resolutions; contents.
51-8-7. Public hearings.
51-8-9. Findings required.
51-8-11. Publication of findings; petition for election.
51-8-13. Adoption of resolution creating district.
51-8-15. Payment of costs.
51-8-17. Appeals from local government findings.
51-8-19. District to be public corporation in perpetuity.
51-8-21. Board of commissioners; membership; authority; withdrawal of district member.
51-8-23. Officers of board; duties; terms; official seal.
51-8-25. Commissioners; qualifications; oath; compensation; meetings.
51-8-27. Rules and regulations of board.
51-8-29. Powers of district, generally.
51-8-31. Enumerated powers.
51-8-33. Powers of eminent domain.
51-8-35. Issuance of bonds.
51-8-37. Procedures for issuance of bonds; form, content, and terms of bonds.
51-8-39. Sale of bonds; interest rates; refunds; validation.
51-8-41. Creation and enforcement of lien; appointment of receiver.
51-8-43. Special tax levy; district authorized to expend tax funds on projects related to Mississippi Delta Study.
51-8-45. Funds for debt service for special improvement bonds.
51-8-47. Rates, fees, tolls, and charges; penalties for nonpayment.
51-8-49. Tax exemption.
51-8-51. Construction contracts.
51-8-53. Annexation of adjacent area; services within annexed territory.
51-8-55. Agreements with state or federal government.
51-8-57. Applicability of municipal standards.
51-8-59. Additional statutory authority not required.
51-8-61. Publication and filing of annual statement; contents.
51-8-63. Corporate body, acquisition and assumption of powers, duties and responsibilities of joint water management district; petition; water management plan; grant of water management district status.
51-8-65. Creation of joint district, approval of Commission required; approval of water management plan a condition for creation; amendments to plan; permits, grants and loans to be consistent with plan.

§ 51-8-1. Creation of joint water management district; petition to existing district.

(1) Any two (2) or more local governmental units, being defined herein to mean a county or municipality, may create a joint water management district in the manner set forth in this chapter.

(2) If any local governmental unit is located within an existing water management district, then the local governmental unit shall petition the

district to provide a service or function needed by the petitioning unit, provided the service or function is one which the district has the power and authority to perform. Upon receipt of the petition, the existing district shall have ninety (90) days within which to respond affirmatively to the petition, setting forth its intent to meet the need or perform the service or function and its proposal or plan for meeting the need or performing the service or function. If the existing water district does not affirmatively respond in a timely fashion, then any two (2) or more local governmental units may create a joint water management district in the manner set forth in this chapter.

(3) The joint water management district may include any geographic area within the boundaries of the interested governmental units.

(4) A joint water management district may be created although adequate water supply, flood control, drainage or other water or wastewater management activities are being undertaken by one or more of the local governmental units interested in creating a joint water management district or by another corporate agency existing and operating within the geographical area of the joint water management district. The term "corporate agency," as used herein, means any agency or subdivision of the state or federal government, any body politic and corporate created under the laws of this state, any utility, or any public or private profit or nonprofit corporation.

SOURCES: Laws, 1985, ch. 481, § 1, eff from and after July 1, 1985; Laws, 1995, ch. 616, § 3, eff from and after July 1, 1995.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-3. Purpose of district.

A joint water management district may be created for the purpose of establishing a water supply system, conserving water resources, developing additional water resources or any other water or wastewater management function not being performed by an existing water management district, except that such a district as described in Section 51-8-1 may not be created for the purpose of constructing, contracting for the construction of, or serving as a local sponsor for the construction of, any dam or other flood control facility or project, the primary purpose of which is to control flooding on any part of the Pearl River, Mississippi River, Yazoo River, Tombigbee River, Big Black River,

Pearl River, Pascagoula River, Tallahatchie River, Yalobusha River, Homochito River, Buffalo River, Leaf River, Coldwater River, Sunflower River, Little Sunflower River, Wolf River, Yockanookany River, Ofahoma River, Strong River, Bogue Chitto River, Amite River, Bayou Pierre River, Tangipahoa River, Noxubee River, Buttahatchee River, Chunky River, Biloxi River, Tippah River, Hatchie River, Jourdan River, Bowie River, Chickasawhay River and Escatawpa River.

SOURCES: Laws, 1985, ch. 481, § 2, eff from and after July 1, 1985.

Cross References — Petition of corporate body to acquire and assume power, duties and responsibilities of joint water management district shall state intent of district to meet purposes set out in this section, see § 51-8-63.

ATTORNEY GENERAL OPINIONS

The board of commissioners of a joint water management district may spend district funds for advertising and educational purposes as described in the water conversation initiative proposal if the board finds, as reflected by an order entered upon the minutes, that this expenditure of funds is necessary to fulfill the purposes of the district. Griffith, Apr. 23, 2004, A.G. Op. 04-0156.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-5. Local government resolutions; contents.

Creation of a joint water management district shall be initiated by identical resolutions passed by each interested local governmental unit. Such resolution shall set forth in detail the geographic boundaries of the district, the function or functions to be performed by the district, a statement of the necessity for the creation of the district, the proposed corporate name of the district and any other information reasonably necessary to inform the constituency of the governmental unit of the purpose and obligations of the respective units proposing to form the district.

SOURCES: Laws, 1985, ch. 481, § 3, eff from and after July 1, 1985.

Cross References — Publication of the resolution specified in this section following a public hearing on the matter, see § 51-8-11.

Circumstances in which the district described in the initial resolution may be created, see § 51-8-13.

Provision that members of the board of commissioners shall be selected as provided in the initial resolution, see § 51-8-21.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 498 et seq.

§ 51-8-7. Public hearings.

Each governmental unit proposing to form a joint water management district shall hold a public hearing in the same manner as set out in Section 19-5-155.

SOURCES: Laws, 1985, ch. 481, § 4, eff from and after July 1, 1985.

Cross References — Findings required with respect to need for district, see § 51-8-9.

Payment of costs of the public hearing provided for in this section, see § 51-8-15.

Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

§ 51-8-9. Findings required.

After the public hearing required by Section 51-8-7 and upon full consideration of all matters and facts presented at such hearing, each such local governmental unit shall make a finding that the public convenience and necessity requires the creation of the district and that the creation of the district is economically sound and feasible.

SOURCES: Laws, 1985, ch. 481, § 5, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

§ 51-8-11. Publication of findings; petition for election.

Upon the making of such finding, the governing body of each interested local governmental unit shall publish the finding accompanied by the initial resolution specified in Section 51-8-5 in the manner provided in Section 19-5-157.

If twenty percent (20%) or fifteen hundred (1500), whichever is lesser, of the qualified electors of a local governmental unit file a written petition with the governing body of such unit on or before the date specified for creation of the district, an election shall be held in the same manner prescribed by Section 19-5-157.

SOURCES: Laws, 1985, ch. 481, § 6, eff from and after July 1, 1985.

Cross References — Payment of costs of notices and election provided for in this section, see § 51-8-15.

Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Publication of resolution authorizing issuance of bonds, and elections relative to issuance of bonds, see § 51-8-37.

§ 51-8-13. Adoption of resolution creating district.

If no petition requiring an election be filed or if three-fifths (3/5) of those voting in said election vote in favor of the creation of such district, the governing body of such local governmental unit shall adopt a resolution creating the district as described in the initial resolution specified in Section 51-8-5.

SOURCES: Laws, 1985, ch. 481, § 7, eff from and after July 1, 1985.

Cross References — Provision that the authority to a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-15. Payment of costs.

All costs incident to the publication of the notices and all other costs incident to the public hearing and election provided in Sections 51-8-7 and 51-8-11 may be paid by the applicable governing body.

SOURCES: Laws, 1985, ch. 481, § 8, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

§ 51-8-17. Appeals from local government findings.

Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudication of the applicable governing body may appeal to the circuit court of the county in the manner provided by law for appeals from orders of such bodies. However, if no such appeal be taken within a period of thirty (30) days from and after the date of the adoption of the resolution creating any such district, the creation of such district shall be final and conclusive and shall not thereafter be subject to attack in any court.

SOURCES: Laws, 1985, ch. 481, § 9, eff from and after July 1, 1985.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

§ 51-8-19. District to be public corporation in perpetuity.

From and after the date of adoption of the resolution creating a joint water management district, such district shall be a public corporation in perpetuity in its corporate name and shall, in that name, be a body politic and corporate with power of perpetual succession.

SOURCES: Laws, 1985, ch. 481, § 10, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-21. Board of commissioners; membership; authority; withdrawal of district member.

(1) The powers of each such district shall be vested in and exercised by a board of commissioners consisting of a minimum of five (5) members, to be selected in the manner provided in the initial resolution prescribed by Section 51-8-5. Provided, however, there shall be at least one (1) member from each county within the district.

The resolution may provide that commissioners will be elected by the electors of the local governmental unit or units which they represent or that commissioners will be appointed by the governing body or bodies of the local governmental units which are members of the district. The resolution shall also prescribe the term of office, which shall not exceed five (5) years, and shall establish the length of initial terms, if staggered terms are to be used. Vacancies and unexpired terms shall be filled by the governing body of each local governmental unit.

(2) Notwithstanding the appointive authority herein granted to the said governing body, its legal and actual responsibilities, authority and function, subsequent to the creation of any such district, shall be specifically limited to said appointive function and the responsibilities outlined in Sections 51-8-1, 51-8-5, 51-8-7, 51-8-9, 51-8-11, 51-8-13, 51-8-15, 51-8-31, 51-8-33, 51-8-35, 51-8-43, 51-8-45, and 51-8-57. The operation, management, abolition or dissolution of such district, and all other matters in connection therewith, shall be vested solely and only in said board of commissioners to the specific exclusion

of said governing body, and the abolition, dissolution or termination of any such district shall be accomplished only by unanimous resolution of the board of commissioners. However, such board of commissioners shall have no power, jurisdiction or authority to abolish, dissolve or terminate any such district while such district has any outstanding indebtedness of any kind or character.

(3) After a district is created, a local governmental unit may withdraw as a member thereof only if:

(a) The district has no outstanding indebtedness of any kind or character;

(b) Withdrawal would not impair the district's water management plan or objectives;

(c) The withdrawing entity is not receiving benefits from the water management operations and activities of the district; and

(d) Withdrawal is approved by a three-fifths (3⁄5) vote of the board of commissioners.

SOURCES: Laws, 1985, ch. 481, § 11, eff from and after July 1, 1985.

§ 51-8-23. Officers of board; duties; terms; official seal.

The board of commissioners shall organize by electing one (1) of its members as chairman and another as vice chairman. It shall be the duty of the chairman to preside at all meetings of the board and to act as the chief executive officer of the board and of the district. The vice chairman shall act in the absence or disability of the chairman. Such board also shall elect and fix the compensation of secretary-treasurer who may or may not be a member of the board. It shall be the duty of the secretary-treasurer to keep all minutes and records of the board and to safely keep all funds of the district. The secretary-treasurer shall be required to execute a bond, payable to the district, in a sum and with such security as shall be fixed and approved by the board of commissioners. The terms of all officers of the board shall be for one (1) year from and after the date of election, and shall run until their respective successors are appointed and qualified.

Each board of commissioners shall adopt an official seal with which to attest the official acts and records of the board and district.

SOURCES: Laws, 1985, ch. 481, § 12, eff from and after July 1, 1985.

§ 51-8-25. Commissioners; qualifications; oath; compensation; meetings.

Every resident citizen of a local governmental unit in any district created pursuant to this chapter, of good reputation, being the owner of land or the conductor of a business situated within such district and being over twenty-one (21) years of age and of sound mind and judgment, shall be eligible to hold the office of commissioner.

Each person appointed as a commissioner, before entering upon the discharge of the duties of his office, shall be required to execute a bond payable to the State of Mississippi in the penal sum of Ten Thousand Dollars ($10,000.00) conditioned that he will faithfully discharge the duties of his office; each such bond shall be approved by the clerk of the governing body of such unit and filed with said clerk.

Any commissioner who shall remove his residence from the local governmental unit from which he was appointed or elected shall be deemed to have automatically vacated his office.

Each commissioner shall take and subscribe to an oath of office prescribed in Section 268, Mississippi Constitution of 1890, before the clerk of said governing body that he will faithfully discharge the duties of the office of commissioner, which oath shall also be filed with said clerk and by him preserved with such official bond.

The commissioners so appointed and qualified shall be compensated on a per diem basis for their services for each meeting of the board of commissioners attended, either regular or special, at the rates established by law for state boards and commissions. Commissioners shall also be reimbursed for all expenses necessarily incurred in the discharge of their official duties in such amounts as are allowed for members of state boards and commissions.

The board of commissioners shall hold regular monthly meetings and such other special meetings as may be called by the chairman or a majority of the commissioners.

SOURCES: Laws, 1985, ch. 481, § 13, eff from and after July 1, 1985.

§ 51-8-27. Rules and regulations of board.

The board of commissioners shall have the power to adopt, promulgate, modify and repeal, and to make exceptions to and grant exemptions and variances from, and to enforce, rules and regulations to effectuate the purposes of the creation of the district, provided that such regulations shall conform to and not conflict with regulations promulgated by state regulatory agencies responsible for regulating the activities which the district was created to perform.

SOURCES: Laws, 1985, ch. 481, § 14, eff from and after July 1, 1985.

§ 51-8-29. Powers of district, generally.

Districts created under this chapter shall have the powers set out in the creating resolution not inconsistent with the powers set forth in this chapter, and in addition, the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate facilities and to contract with any municipality, person, firm or corporation for services and for a supply and distribution of water, for collection, transportation, treatment and/or disposal of sewage and for services required incident to the operation and maintenance of such systems. Except as provided elsewhere in this chapter, as long as any such district continues to furnish any of the services which it was authorized to furnish in and by the resolution by which it was created, it shall be the sole public corporation empowered to furnish such services within such district.

Any district created pursuant to the provisions of this chapter shall be vested with all the powers necessary and requisite for the accomplishment of the purpose for which such district is created. No enumeration of powers herein shall be construed to impair or limit any general grant of power herein contained nor to limit any such grant to a power or powers of the same class or classes as those enumerated. Such districts are empowered to do all acts necessary, proper or convenient in the exercise of the powers granted under such sections.

SOURCES: Laws, 1985, ch. 481, § 15, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-31. Enumerated powers.

Any district created pursuant to the provisions of this chapter, acting by and through the board of commissioners of such district as its governing authority, shall have, among others, the following powers:

(a) To sue and be sued;

(b) To acquire by purchase, gift, devise, lease or any other mode of acquisition, and to hold or dispose of, real and personal property of every kind within or without the district;

(c) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds, leases or contracts for financial advisory services;

(d) To incur debts, to borrow money, to issue negotiable bonds, and to provide for the rights of the holders thereof;

(e) To fix, maintain, collect and revise rates and charges for services rendered by or through the facilities of such district, which rates and charges shall not be subject to review or regulation by the Mississippi Public Service Commission except in those instances where a city operating similar services would be subject to regulation and review; however, said district shall obtain a certificate of convenience and necessity from the Mississippi Public Service Commission for operating water and/or sewer systems;

(f) To pledge all or any part of its revenues to the payment of its obligations;

(g) To make such covenants in connection with the issuance of bonds or to secure the payment of bonds that a private business corporation can make under the general laws of the state;

(h) To use any right-of-way, public right-of-way, easement, or other similar property or property rights necessary or convenient in connection with the acquisition, improvement, operation or maintenance of the facilities of such district held by the state or any political subdivision thereof; however, the governing body of such political subdivision shall consent to such use;

(i) To enter into agreements with state and federal agencies for loans, grants, grants-in-aid, and other forms of assistance, including, but not limited to, participation in the sale and purchase of bonds;

(j) To acquire by purchase, lease, gift, or otherwise, any existing works and facilities providing services for which it was created, and any lands, rights, easements, franchises and other property, real and personal, necessary to the completion and operation of such system upon such terms and conditions as may be agreed upon, and, if necessary as part of the acquisition price, to assume the payment of outstanding notes, bonds or other obligations upon such system; however, if any corporate agency owning such facilities desires to continue providing such services, the corporate agency shall so notify the district not later than ninety (90) days after the effective date of the creation of the district, and the district shall thereupon relinquish its right to provide such services until and unless the corporate agency elects otherwise or fails to adequately provide such services;

(k) To extend its services to areas beyond but within one (1) mile of the boundaries of such district; however, no such extension shall be made to areas already occupied by another corporate agency rendering the same service so long as such corporate agency desires to continue to serve such areas. Areas outside of the district desiring to be served which are beyond the one-mile limit must be brought into the district by annexation proceedings;

(*l*) To be deemed to have the same status as counties and municipalities with respect to payment of sales taxes on purchases made by such districts;

(m) To borrow funds for interim financing subject to receipt of funds as outlined in Section 51-8-35;

(n) To choose a location within the district as the central office of the district;

(o) To adopt a plan for management of the water resources of the district, provided that such plan first be submitted to and approved by the Commission on Natural Resources as consistent with the state water management plan or objectives;

(p) To hire such personnel and contract for such legal, technical, or other services as the board of commissioners deems necessary for the operation of the district and fulfillment of its water management objectives; and

(q) To secure connection to or participation in the services provided by the district, including the power to obtain mandatory or prohibitory injunctive relief; provided, however, that the authority of the board of commissioners shall not be exercised in conflict with the regulatory and enforcement authority of the Commission on Natural Resources.

SOURCES: Laws, 1985, ch. 481, § 16, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in paragraph (j). The word "relinguish" was changed to "relinquish." The Joint Committee ratified the correction at its December 3, 1996, meeting.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Regulatory duties of the Mississippi Public Service Commission generally, see § 77-3-1 et seq.

ATTORNEY GENERAL OPINIONS

A regional water supply district could enter into an agreement with Saltillo whereby Saltillo would provide funds for the construction of new infrastructure that would be the property of the district, the consideration for which would be a credit against water consumption. Beasley, June 7, 2002, A.G. Op. #02-0252.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

94 C.J.S., Waters §§ 546 et seq.

§ 51-8-33. Powers of eminent domain.

The board of commissioners may exercise, on behalf of the district, such powers of eminent domain as are specified in the creating resolution wherever and whenever public necessity and convenience so requires.

SOURCES: Laws, 1985, ch. 481, § 17, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Restriction of powers of Pearl River Valley Water Supply District, exclusion of power of eminent domain as provided for in this section, see § 51-9-121.

Restriction of powers of Pearl River Basin Development District in regard to power of eminent domain as provided for in this section, see § 51-11-13.

Restriction of powers of Tombigbee River Valley Water Management District in regard to power of eminent domain as provided for in this section, see § 51-13-111.

ATTORNEY GENERAL OPINIONS

The eminent domain powers of joint water management districts referred to in Section 51-8-33 are those set forth in Sections 11-27-1 through 11-27-51. Applewhite, Oct. 27, 2000, A.G. Op. #2000-0635.

§ 51-8-35. Issuance of bonds.

(1) Any such district shall have the power to provide funds for the purpose of constructing, acquiring, reconstructing, improving, bettering or extending the facilities of such district or for the purpose of buying, leasing or otherwise acquiring the assets and facilities of any nonprofit, nonshare corporation chartered under Title 79, Chapter 11, or any other utility district by the issuance of revenue bonds. Such bonds shall be payable solely and only from the revenues of such facilities, and such revenues may be pledged from a portion of the service area of the district to the support of debt service for a specific series or issue of bonds if such apportionment is economically feasible.

(2) Any such district shall have the power to provide funds, in addition to or in conjunction with the funds authorized in subsection (1) of this section, for water supply or pollution abatement projects by issuing special improvement pollution abatement bonds, special improvement water bonds, or combinations of special improvement water and sewer bonds, if the resolution creating the district authorized the governing bodies of the local governmental bodies to make assessments against benefitted properties as outlined in Section 51-8-45. Such bonds shall be payable solely and only from charges assessed to benefitted properties as outlined in said Section 51-8-45.

SOURCES: Laws, 1985, ch. 481, § 18, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Powers of district, including the power to borrow funds for interim financing subject to receipt of funds as outlined in this section, see § 51-8-31.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 95-112.

CJS. 11 C.J.S., Bonds §§ 7 et seq.

§ 51-8-37. Procedures for issuance of bonds; form, content, and terms of bonds.

(1) The board of commissioners of any district created pursuant to this chapter may issue revenue or special improvement bonds of such district by resolution spread upon the minutes of such board. Bonds may be issued from time to time without an election being held upon the question of their issuance unless the board of commissioners of the district is presented with a petition for an election upon the question of issuance signed by twenty percent (20%) or fifteen hundred (1500), whichever is lesser, of the qualified electors residing within the district. The resolution authorizing any issue of bonds other than the initial issue shall be published in a manner similar to the publication of the resolution, as outlined in Section 51-8-11. If an election is required, it shall be

held in substantial accord with the election outlined in Section 51-8-11. The cost of this election shall be borne by the district.

(2) All bonds shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting. They shall be in denominations of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), and may be registered as issued, and shall be numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued, the total amount authorized to be issued, the interest on the bond, and that such bonds shall never constitute nor give rise to a pecuniary liability of the district or local governmental unit or a charge against the general credit or taxing powers of the local governmental unit.

(3) Such bonds shall contain such covenants and provisions; shall be executed; shall be in such form, format, type, denomination or denominations; shall be payable as to principal and interest, at such place or places; and shall mature at such time or times, all as shall be determined by such board of commissioners and set forth in the resolution pursuant to which such bonds shall be issued. The date of maturity of such bonds shall not exceed forty (40) years from the date of the bonds, except that on special improvement pollution abatement bonds, special improvement water bonds, or special improvement water and sewer bonds, the date of maturity shall not exceed twenty-five (25) years from their date.

(4) No bonds shall bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-103; no bond shall bear more than one (1) rate of interest; each bond shall bear interest from its date to its stated maturity date at the interest rate specified on the bonds; all bonds of the same maturity shall bear the same rate of interest from date to maturity. All interest accruing on such bonds so issued shall be payable semiannually, or annually, except that the first interest payment may be for any period not exceeding one (1) year. No interest payment on bearer bonds shall be evidenced by more than one (1) coupon and neither cancelled nor supplemental coupons shall be permitted. The lowest interest rate specified for any bonds issued shall not be less than sixty percent (60%) of the highest interest rate specified for the same bond issue.

(5) Such bonds shall be signed by the chairman and secretary-treasurer of the commission with the seal of the commission affixed thereto; however, the coupons may bear only the facsimile signatures of such chairman and secretary-treasurer.

(6) Any provisions of the general laws to the contrary notwithstanding, any bonds and interest coupons issued pursuant to the authority of this chapter shall be securities within the meaning of Article 8 of the Uniform Commercial Code, being Section 75-8-101 et seq.

(7) Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Laws, 1985, ch. 481, § 19, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 113 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations §§ 214:10 et seq.

CJS. 11 C.J.S., Bonds §§ 7 et seq.

§ 51-8-39. Sale of bonds; interest rates; refunds; validation.

The bonds issued under this chapter shall be sold for not less than par value plus accrued interest at public sale in the manner provided for in Section 31-19-25, Mississippi Code of 1972; however, bonds may be sold to the United States of America or an agency or instrumentality thereof at private sale.

Each interest rate specified in any bid must be in multiples of either one-tenth of one percent (1/10 of 1%) or one-eighth of one percent (1/8 of 1%), and a zero rate of interest cannot be named.

Any revenue bonds issued under the provisions of this chapter may be refunded in like manner as revenue bonds of municipalities shall be refunded.

Any bonds issued under the provisions of this chapter shall be submitted to validation under the provisions of Sections 31-13-1 through 31-13-11.

SOURCES: Laws, 1985, ch. 481, § 20, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 148 et seq.

15A Am. Jur. Legal Forms 2d, Public Securities and Obligations §§ 214:52 et seq.

CJS. 11 C.J.S., Bonds §§ 7 et seq.

§ 51-8-41. Creation and enforcement of lien; appointment of receiver.

There is hereby created a statutory lien in the nature of a mortgage lien upon any system or systems acquired or constructed in accordance with this chapter, including all extensions and improvements thereof or combinations thereof subsequently made, which lien shall be in favor of the holder or holders of any bonds issued pursuant to said sections, and all such property shall remain subject to such statutory lien until the payment in full of the principal of and interest on said bonds. Any holder of said bonds or any of the coupons representing interest thereon may, either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction, protect and enforce such statutory lien and compel the performance of all duties required by said sections, including the making and collection of sufficient rates for the service or services, the proper accounting thereof, and the performance of any duties required by covenants with the holders of any bonds issued in accordance herewith.

If any default is made in the payment of the principal of or interest on such bonds, any court having jurisdiction of the action may appoint a receiver to administer said district and said system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against said system or systems, and for payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of this chapter and any covenants with bondholders.

SOURCES: Laws, 1985, ch. 481, § 21, eff from and after July 1, 1985.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 209 et seq.

CJS. 11 C.J.S., Bonds §§ 99 et seq.

§ 51-8-43. Special tax levy; district authorized to expend tax funds on projects related to Mississippi Delta Study.

(1) Except as otherwise provided in subsection (2), the governing body of any local governmental unit which is a member of any such district may, according to the terms of the resolution, levy a special tax, not to exceed two (2) mills, on all of the taxable property in such district, the avails of which shall be paid over to the board of commissioners of the district to be used for preparation and implementation of the district's water management plan, exclusive of capital expenditures, and operation of the administrative office of the district. Provided, however, that such special tax shall not be levied against any property in any portion of such district where the district has relinquished and surrendered its prior right to provide a particular service, as provided elsewhere in this chapter.

(2) The Board of Commissioners of the Yazoo-Mississippi Joint Water Management District is authorized to expend funds generated from the special tax levy under subsection (1) in connection with projects under the USDA, NRCS Mississippi Delta Comprehensive, Multipurpose Water Resource Plan hereinafter referred to as the "Mississippi Delta Study." Such projects include low flows, interbasin transfers of new water supplies, on-farm storage reservoirs or conservation, and implementation activities such as the Sunflower River Low Flow Project and Well Field Project in Coahoma County, Mississippi. Expenditures under this subsection may include in-kind expenditures as well as direct expenditures, the cost and expenses of construction, operation and maintenance of the projects, and the cost and expenses of an indirect nature, such as technological assistance, engineering and scientific evaluation and analysis by technical personnel, labor, transportation and any expenditure that is intended to satisfy the districts' in-kind obligations in connection with the projects. However, the expenditures authorized by this subsection shall not extend to any project that relates to, encompasses or includes effluent

treatment facilities or any water supply system to which the Safe Drinking Water Act applies, and any other projects that are determined by the district to be beyond the scope of the Mississippi Delta Study Projects.

SOURCES: Laws, 1985, ch. 481, § 22; Laws, 2005, ch. 363, § 1, eff from and after passage (approved Mar. 15, 2005.)

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Provision that territory annexed by a joint water management district shall be subject to taxes levied by a local governing body under this section, see § 51-8-53.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 52B C.J.S., Levees and Flood Control §§ 19 et seq.

93 C.J.S., Waters §§ 546 et seq.

§ 51-8-45. Funds for debt service for special improvement bonds.

(1) Funds for debt service for special improvement pollution abatement bonds, special improvement water bonds, or special improvement water and sewer bonds issued in lieu of or in conjunction with revenue bonds shall be provided by charges upon the properties benefitted according to procedures set forth in this section.

(2) So long as any special improvement bond authorized by this chapter shall remain outstanding, it shall be the duty of the governing bodies at the time its annual tax levies are made, to levy such assessments as are certified to them by the district as being due and payable at a stated time. It shall be the duty of the tax collector of each such governing body to collect such charges and pay the funds collected to the board of commissioners of the district for payment to interest and principal and to the retirement of bonds issued by the district in accord with the maturities schedule pertaining thereto.

(3) One (1) of the following procedures may be utilized in providing funds as authorized by this section:

(a) Funds for debt service may be provided by charges assessed against the property abutting upon the sewer, or abutting upon the railroad and/or utility right-of-way, street, road, highway, easement or alley in which such sewer mains or water mains are installed according to the frontage thereof.

The board of commissioners of the district, after giving notice and hearing protests in the manner prescribed by Sections 21-41-5 and 21-41-7, shall, by resolution spread upon its minutes, define the services to be offered and the entire area to be benefitted by each improvement; each such improvement may be designated as a project, or all such improvements may be designated as one (1) project. However, if forty percent (40%) of the property owners or the owners of more than forty percent (40%) of the front footage of the property involved and actually residing on property owned by them and included within that part of any street, avenue, etc., ordered to be specially improved, or otherwise actually occupying property owned by them and included within that area designated as a project, shall file a protest, then the improvement shall not be made and the assessment shall not be made.

The resolution shall direct that the cost to be assessed against each lot or parcel of land shall be determined by dividing the entire assessable cost of the project by the total number of front feet fronting on the street, easement or other right-of-way in which all of the mains embraced within the project are installed and multiplying the quotient by the total number of front feet in any particular lot or parcel of land fronting on the street, easement or other right-of-way in which sewer mains or water mains are installed. The result thereof shall be delivered by the board of commissioners of the district to the applicable governing body as the amount of special tax to be assessed against each lot or piece of ground for the owner's part of the total cost of the improvements.

The resolution, at the discretion of the governing authorities of the district, may provide for the district to pay the assessment against any property abutting a sewer or water improvement, if the property whose assessment is being paid by the district is occupied by a contributor or consumer connected to the sewer or water system who is, or will be, paying service charges at the time the assessment roll maintained by the district is confirmed; provided, however, such payment shall not exceed an amount equal to that assessed against any one hundred twenty-five (125) feet of frontage of abutting property in a project.

The resolution may, at the discretion of the governing authorities of the district, provide for the district to pay the assessment against any property abutting a section of sewer main or water main designated as necessary and essential to the overall operation of such system or systems; provided, however, no service shall be provided to any such abutting property until and unless all such payments made by the district are repaid to the district by the owners of such benefitted property.

(b) Funds for debt service may be provided by charges assessed against a lot or block in a recorded subdivision of land or by other appropriately designated parcel or tract of land in accord with the following procedure:

The board of commissioners of the district, after giving notice and hearing protests in the manner prescribed by Sections 21-41-5 and 21-41-7, shall by resolution spread upon its minutes define the services to be offered and the entire area to be benefitted by each improvement; each such improvement may be designated as a project, or all such improvements may be designated as one (1) project. However, if forty percent (40%) of the property owners or the owners of more than forty percent (40%) of the front footage of the property involved and actually residing on property owned by them and included within that part of any street, avenue, etc., ordered to be specifically improved, or otherwise actually occupying property owned by them and included within that area designated as a project, shall file a protest, then the improvement shall not be made and the assessment shall not be made.

Charges shall be assessed in accord with the provisions of Sections 21-41-9 through 21-41-21 and 21-41-25 through 21-41-39.

The resolution providing for assessments under the provisions of this subsection, at the discretion of the governing authorities of the district, may provide for the district to pay the assessment against any lot or parcel of ground not exceeding one (1) acre in size, if such property is occupied by a contributor or consumer connected to the sewer or water system who is, or will be, paying service charges at the time the assessment roll maintained by the district is confirmed.

The resolution providing for assessment of benefitted properties under this procedure shall provide for appropriate payment to debt service accounts by property owners not included in the original assessment roll but benefitted by facilities installed with funds provided by such assessments at, or prior to, the time at which a nonassessed but benefitted property is actually served by said facilities.

(c) Funds for debt service may be provided by charges assessed against lands of the district in proportion to the benefits accruing to said lands in accord with the following procedure:

The board of commissioners of the district, after giving notice and hearing protests in the manner prescribed by Sections 21-41-5 and 21-41-7, shall by resolution spread upon its minutes define the services to be offered and the entire area to be benefitted by each improvement; each such improvement may be designated as a project, or all such improvements may be designated as one (1) project. However, if forty percent (40%) of the property owners or the owners of more than forty percent (40%) of the property included within that area designated as a project, shall file a protest, then the improvement shall not be made and the assessment shall not be made.

Charges shall be assessed in applicable manner following the provisions of Sections 21-41-9 through 21-41-21 and 21-41-25 through 21-41-39.

The resolution providing for assessments under the provisions of this subsection, at the discretion of the governing authorities of the district, may provide for the district to pay the assessment against any lot or parcel of ground not exceeding one (1) acre in size, if such property is occupied by a contributor or consumer connected to the sewer or water system who is, or will be, paying service charges at the time the assessment roll maintained by the district is confirmed.

The resolution providing for assessment of benefitted properties under this procedure shall provide for appropriate payment to debt service accounts by property owners not included in the original assessment roll but benefitted by facilities installed with funds provided by such assessments at, or prior to, the time at which a nonassessed but benefitted property is actually served by said facilities.

SOURCES: Laws, 1985, ch. 481, § 23, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

Power of district to provide funds for water supply or pollution abatement projects by issuing special improvement bonds, see § 51-8-35.

§ 51-8-47. Rates, fees, tolls, and charges; penalties for nonpayment.

The board of commissioners of the district issuing bonds pursuant to this chapter shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities of its system or systems; shall prescribe penalties for the nonpayment thereof; and shall revise such rates, fees, tolls or charges from time to time whenever necessary to insure the economic operation of such system or systems. The rates, fees, tolls or charges prescribed shall be, as nearly as possible, such as will always produce revenue at least sufficient to:

(a) Provide for all expenses of operation and maintenance of the system or systems, including reserves therefor;

(b) Pay when due all bonds and interest thereon for the payment of which such revenues are or shall have been pledged, charged or otherwise encumbered, including reserves therefor; and

(c) Provide funds for reasonable expansions, extensions and improvements of services.

SOURCES: Laws, 1985, ch. 481, § 24, eff from and after July 1, 1985.

§ 51-8-49. Tax exemption.

The property and revenue of such district shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to this chapter and the income therefrom shall be exempt from all state, county and municipal taxation, except inheritance, transfer and estate taxes, and it may be so stated on the face of said bonds.

SOURCES: Laws, 1985, ch. 481, § 25, eff from and after July 1, 1985.

§ 51-8-51. Construction contracts.

All construction contracts by the district shall be made in accordance with the laws governing public contracts for counties and municipalities, being Sections 31-5-3 through 31-5-57.

SOURCES: Laws, 1985, ch. 481, § 26, eff from and after July 1, 1985.

Editor's Note — Sections 31-5-5 through 31-5-13, referred to in this section, were repealed by Laws of 1980, ch. 520, § 5, effective from and after April 1, 1981.

§ 51-8-53. Annexation of adjacent area; services within annexed territory.

Any area adjacent to any district created pursuant to this chapter may be annexed to and become a part of such district by the same procedure as prescribed for the original creation of the district. All costs incident to the publication of notice and all other costs incident to the hearings, election and proceedings shall be paid by the district.

The district shall have the exclusive right to provide any of the services for which it was created in the annexed territory; however, if any part of the annexed territory is then being served by another corporate agency with any such service, the district shall, at the option of the other corporate agency, either relinquish its prior right to serve the area occupied by the corporate agency or acquire by purchase the facilities of such corporate agency, together with its franchise rights to serve such area.

If the option is for the district to purchase, upon notification thereof, the district shall be obligated to buy and pay for, and the corporate agency shall be obligated to convey to the district, all its service facilities and franchise rights in the annexed area. Such property shall be acquired by the district in accordance with such terms and conditions as may be agreed upon, and the district shall have the authority to assume the operation of such entire system or facility and to assume and become liable for the payment of any notes, bonds or other obligations that are outstanding against said system or facility and payable from the revenues therefrom.

If the district is notified to relinquish its prior right to serve the annexed area, the district shall grant the corporate agency a franchise to serve within the annexed territory; however, the corporate agency shall be entitled to serve only such customers or locations within the annexed area as it served on the date that such annexation became effective.

The annexed territory shall become liable for any existing indebtedness of the district and be subject to any taxes levied by a local governing body under Section 51-8-43.

SOURCES: Laws, 1985, ch. 481, § 27, eff from and after July 1, 1985.

ATTORNEY GENERAL OPINIONS

A city may be annexed by a joint water management district in accordance with Section 51-8-53, without affecting the continuing existence of another joint water management district, so long as the services offered by the two districts do not overlap and the total ad valorem taxation assessed by the participating governmental units on property in the city does not exceed the maximum permitted in Section 51-8-43. Griffith, Jan. 20, 2006, A.G. Op. 05-0630.

§ 51-8-55. Agreements with state or federal government.

The board of commissioners of any district created pursuant to the provisions of this chapter shall have the authority to enter into cooperative agreements with the state or federal government, or both; to obtain financial assistance in the form of loans or grants as may be available from the state or federal government, or both; and to execute and deliver at private sale notes or bonds as evidence of such indebtedness in the form and subject to the terms and conditions as may be imposed by the state or federal government, or both; and to pledge the income and revenues of the district, or the income and revenues from any part of the area embraced in the district, in payment thereof. It is the purpose and intention of this section to authorize districts to do any and all things necessary to secure the financial aid or cooperation of the state or federal government, or both, in the planning, construction, maintenance or operation of project facilities.

SOURCES: Laws, 1985, ch. 481, § 28, eff from and after July 1, 1985.

§ 51-8-57. Applicability of municipal standards.

When any district is created within three (3) miles of the corporate boundaries of any existing municipality, the municipality is empowered to require such district to construct and maintain all facilities, whether purchased or constructed, to standards commensurate with those of the adjoining municipality; provided, however, the governing authorities of the municipalities may specifically waive compliance with any or all of such requirements.

SOURCES: Laws, 1985, ch. 481, § 29, eff from and after July 1, 1985.

Cross References — Provision that the authority of a joint water management district is specifically limited to that provided for in this section and certain other sections of this chapter, see § 51-8-21.

§ 51-8-59. Additional statutory authority not required.

The provisions of this chapter, without reference to any other statute or statutes, shall be deemed to be full and complete authority for the creation of such districts and for the issuance of such bonds. No proceedings shall be required for the creation of such districts or for the issuance of such bonds other than those provided for and required herein. All the necessary powers to be exercised by the governing bodies of member local governing units and by the board of commissioners of any such district, in order to carry out the provisions of such sections, are hereby conferred.

SOURCES: Laws, 1985, ch. 481, § 30, eff from and after July 1, 1985.

§ 51-8-61. Publication and filing of annual statement; contents.

Within ninety (90) days after the close of each fiscal year, the board of commissioners shall publish in a newspaper of general circulation in the county a sworn statement showing the financial condition of the district, the earnings for the fiscal year just ended, a statement of the water and sewer rates being charged and a brief statement of the method used in arriving at such rates. Such statement shall also be filed with the local governmental units creating the district.

SOURCES: Laws, 1985, ch. 481, § 31, eff from and after July 1, 1985.

§ 51-8-63. Corporate body, acquisition and assumption of powers, duties and responsibilities of joint water management district; petition; water management plan; grant of water management district status.

(1) If authorized pursuant to Section 51-9-121, 51-11-13, 51-13-111 or 51-15-119, as applicable, any corporate body organized under the provisions of Chapters 9, 11, 13 and 15 of Title 51, Mississippi Code of 1972, may elect by resolution duly adopted by its board of directors, to acquire and assume the power, duties and responsibilities of a joint water management district as set forth in Sections 51-8-27 through 51-8-55, Mississippi Code of 1972, by petitioning the Commission on Environmental Quality. The petition shall be in the form and content as prescribed by the commission and shall state the intention of the district to perform functions meeting the purposes for the creation of joint water management districts set out in Section 51-8-3, Mississippi Code of 1972.

(2) The commission may deny, grant preliminary approval of the petition and request additional information or grant preliminary approval of the petition and direct the district to proceed with the formulation of a water management plan for the district.

(3) No petition shall be finally and unconditionally granted until the district has submitted to the commission a water management plan for the district that meets the criteria set forth by the commission. Upon submission of a district water management plan and the satisfactory completion of any other requirements, the commission may finally and unconditionally approve the district's petition and grant the district joint water management district status.

SOURCES: Laws, 1995, ch. 616, § 1, eff from and after July 1, 1995.

Cross References — Pearl River Valley Water Supply District required to comply with this section before exercising powers and duties, see § 51-9-121.

Pearl River Basin Development District required to comply with this section before exercising powers and duties, see § 51-11-13.

Tombigbee River Valley Water Management District required to comply with this section before exercising powers and duties, see § 51-13-111.

§ 51-8-65. Creation of joint district, approval of Commission required; approval of water management plan a condition for creation; amendments to plan; permits, grants and loans to be consistent with plan.

(1) From and after July 1, 1995, no joint water management district shall be created without the approval of the Commission on Environmental Quality. The commission may establish criteria for the approval of a request to create a joint water management district, but may not finally approve a request and grant joint water management district status until a water management plan for the proposed district has been approved by the commission. Any amendments to the district's water management plan must also be approved by the commission.

(2) After the granting of joint water management district status to a district by the commission, neither the department, the permit board nor any other agency in the State of Mississippi shall issue any permit, grant or loan for any water related facility or project that is not consistent with a district's water management plan.

(3) In its consideration of the consistency of a project, grant or loan with a district's water management plan, the department, permit board or other agency shall notify the affected water management district of the request for a permit, grant or loan and give the district a reasonable time, but not less than ten (10) days nor more than thirty (30) days, to respond to the request.

SOURCES: Laws, 1995, ch. 616, § 2, eff from and after July 1, 1995.

Cross References — Pearl River Valley Water Supply District required to comply with this section before exercising powers and duties, see § 51-9-121.

Pearl River Basin Development District required to comply with this section before exercising powers and duties, see § 51-11-13.

Tombigbee River Valley Water Management District required to comply with this section before exercising powers and duties, see § 51-13-111.

CHAPTER 9

Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Metropolitan Area Water Supply Act

Article 1.	Development of Region Bordering Pearl River	51-9-1
Article 3.	Pearl River Valley Water Supply District	51-9-101
Article 5.	Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978	51-9-171
Article 7.	Metropolitan Area Water Supply Act	51-9-189

ARTICLE 1.

DEVELOPMENT OF REGION BORDERING PEARL RIVER.

SEC.	
51-9-1.	Pearl River Industrial Commission created.
51-9-3.	Compensation and organization.
51-9-5.	Powers and duties.
51-9-7.	Funding.
51-9-9.	Article supplementary to other laws.
51-9-11.	Donations by certain counties and municipalities.

§ 51-9-1. Pearl River Industrial Commission created.

There is created the Pearl River Industrial Commission, composed of Hinds, Leake, Madison, Neshoba, Rankin and such other counties in the state through which or bordering which the Pearl River runs. The Governor shall appoint one (1) member to the commission from each county from a list of three (3) names to be submitted by the board of supervisors in each participating county. The three (3) names submitted by the board of supervisors of Madison County and the board of supervisors of Rankin County shall be the names of persons who reside on and are holders of residential leases from the Pearl River Valley Water Supply District that are located in Madison County and Rankin County, respectively, or who reside in established subdivisions in Madison County and Rankin County, respectively, in which some of the residential property of the subdivision is leased from the Pearl River Valley Water Supply District. In his appointment the Governor shall designate the chairman and vice chairman of the commission. Each member of the commission shall serve for a term concurrent with that of the Governor. The board of supervisors in any county through which or by which the Pearl River runs, other than those counties named above, may bring that county in as a member of the commission by resolution presented to the Governor; and the board of supervisors in such county may, in its discretion, call an election before taking such action, the election to be held as nearly as possible in the same manner other elections are held in the county.

The member appointed from Madison County who is serving on July 1, 2012, shall continue to serve until January 1, 2013, after which date the Governor shall appoint a member from Madison County who meets the residency requirements of this section. The person appointed under the provisions of this paragraph shall serve for the remainder of the unexpired term.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5; Laws, 1979, ch. 309; Laws, 2012, ch. 549, § 1, eff from and after July 1, 2012.

Cross References — Provision that the Pearl River Industrial Commission shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

ATTORNEY GENERAL OPINIONS

Pearl River Basin Development District is, in specific and limited context of state purchasing laws, governing authority, and as such may exercise discretionary authority afforded other governing authorities with respect to purchase of liability insurance. Stennis, Sept. 4, 1992, A.G. Op. #92-0717.

§ 51-9-3. Compensation and organization.

The members shall serve without pay except they shall be reimbursed out of county funds provided by this article for their actual traveling expenses and other necessary expenses incurred in the performance of their official duties, in an amount equal to travel and subsistence expenses allowed state employees under law. Upon appointment, said members shall meet and organize at some place designated by the governor, which shall be in one of the participating counties; and the members shall set a regular time and place for the members of the commission to meet, secure offices and all necessary equipment, and employ such engineering, professional, clerical, stenographic, and other assistance as may be necessary to carry out the purposes of this article. An executive director may be appointed by the board if this is deemed advisable, and salaries of all personnel may be paid out of funds provided under the terms of this article in an amount agreeable to the commission.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5.

§ 51-9-5. Powers and duties.

The Pearl River Industrial Commission is hereby authorized and empowered to do any and all things necessary or deemed by it advisable in making a survey or surveys of the region bordering the Pearl River, to investigate the possibilities of developing such areas from an industrial, irrigational, and recreational standpoint, to attract new industries, and to conserve available water for irrigational and industrial purposes, acting in co-operation with the federal government or any agency thereof and with any other interested groups. It is contemplated that plans be considered and drawn and surveys made for the location of industrial sites and making the most advantageous use of available water supplies, to protect against pollution and to devise methods of disposing of industrial waste, and adapting a long-range plan of sewerage disposal for the area. The commission is charged with the responsibility of co-operating with the state board of water commissioners created by Section 51-3-15.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5.

ATTORNEY GENERAL OPINIONS

The provisions of Chapter 169, Laws of 1956 and Chapter 197, Laws of 1958 are applicable in determining the original purposes of the Ross Barnett Reservoir. Moak, July 25, 1997, A.G. Op. #97-0445.

§ 51-9-7. Funding.

The commission shall be financed in all its activities from funds made available by each of the associated counties, and each such county is authorized and empowered to contribute any amount or amounts which the board of supervisors thereof shall deem advisable, acting in their sole discretion, to be paid from the general county fund of the respective counties.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5.

§ 51-9-9. Article supplementary to other laws.

This article shall be considered supplemental and additional to any and all other laws, and confers sufficient authority in and of itself for the purposes set forth herein.

SOURCES: Codes, 1942, § 5956-41; Laws, 1956, ch. 169, §§ 1-5.

§ 51-9-11. Donations by certain counties and municipalities.

The board of supervisors of any of the several counties of this state bordering on the Pearl River, or through which the Pearl River flows, and the governing authority of any municipality within any such county are each respectively hereby authorized and empowered, in their sole discretion, to appropriate and donate such a sum of money as said board of supervisors or governing authority shall deem reasonable and advisable to assist any nonprofit, nonshare corporation organized and existing under the laws of the State of Mississippi for the purpose of planning and developing the resources and industrial, agricultural, and recreational potentials of the Pearl River. Any donation made by the board of supervisors of any county or the governing authority of any municipality under the authority of this section shall be evidenced by an order spread upon the minutes of said board or governing authority, and shall be paid out of general funds in their respective treasuries, to be drawn by warrant thereon payable directly to such a nonprofit, nonshare corporation.

Any additional tax levy made to support any appropriations or donations under authority of this section shall not be refundable under the homestead exemption laws of this state.

SOURCES: Codes, 1942, § 5956-91; Laws, 1963, 1st Ex. Sess., ch. 12, §§ 1-3, eff from and after passage (approved March 2, 1963).

ARTICLE 3.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT.

SEC.

51-9-101. Citation of article.
51-9-103. Legislative determination and declaration of policy.
51-9-105. General authority to organize.
51-9-107. Board of directors.
51-9-109. Petition for creation of district.
51-9-111. Proceedings after petition filed.
51-9-113. Hearing.
51-9-115. Order and notice of election.
51-9-117. Election.
51-9-119. Appeals.
51-9-121. Powers of district.
51-9-122. Renewal of residential property leases in district.
51-9-122.1. Authority of board of directors to renegotiate nonresidential leases upon expiration.
51-9-123. Construction contracts.
51-9-125. Park and recreation facilities.
51-9-127. Rules and regulations.
51-9-129. Appropriation permit.
51-9-131. State tax used for water supply district fund.
51-9-133. Board of directors to issue bonds.
51-9-135. Details of bonds; supplemental powers conferred in issuance of bonds.
51-9-137. Limitation on amount of bonds.
51-9-139. Special tax levy for payment of bonds.
51-9-140. Repealed.
51-9-141. Validation of bonds.
51-9-143. Trust agreement.
51-9-145. Refunding bonds.
51-9-147. Bonds to be legal investments.
51-9-149. Depository for funds of district.
51-9-151. Agreements relative to federal highways.
51-9-153. Cooperation with other governmental agencies.
51-9-155. Water supply district law controlling.
51-9-157. District and its bonds exempt from taxation.
51-9-159. Preliminary expenses.
51-9-161. Overflow of school lands not to constitute waste.
51-9-163. Savings clause.

§ 51-9-101. Citation of article.

This article may be cited as the Pearl River Valley Water Supply District Law.

SOURCES: Codes, 1942, § 5956-51; Laws, 1958, ch. 197, § 1, eff from and after passage (approved May 5, 1958).

Cross References — Provision that the Pearl River Valley Water Supply District shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

JUDICIAL DECISIONS

1. In general.

An action to enjoin a taking of property under this statute may not be brought in a federal court where a remedy is available in the state courts. Brown v. Pearl River Valley Water Supply Dist., 292 F.2d 395 (5th Cir. 1961).

The decision in Culley v. Pearl River Industrial Commission, 234 Miss. 788, 108 So. 2d 390, holding the water supply district to have been organized for a public purpose, does not preclude a landowner from contending in the state courts that property sought to be condemned is not being taken for a public purpose. Brown v. Pearl River Valley Water Supply Dist., 292 F.2d 395 (5th Cir. 1961).

This statute is not unconstitutional as conferring on the judiciary authority to answer legislative questions, or as a local law on a matter which may be provided for only by general laws, or as authorizing the permanent obstruction of navigable waters of the state, or as violating the requirement that taxation be equal and uniform throughout the state, or as empowering the water district to condemn property and rent or sell it for private use. Culley v. Pearl River Indus. Comm'n, 234 Miss. 788, 108 So. 2d 390 (1959).

§ 51-9-103. Legislative determination and declaration of policy.

It is hereby declared, as a matter of legislative determination, that the waterways and surface waters of the state are among its basic resources, that the overflow and surface waters of the state have not heretofore been conserved to realize their full beneficial use, that the preservation, conservation, storage, and control of such waters are necessary to insure an adequate, sanitary water supply at all times, to promote the balanced economic development of the state, and to aid in flood control, conservation and development of state forests, irrigation of lands needing irrigation, and pollution abatement. It is further determined and declared that the preservation, conservation, storage, and control of the waters of the Pearl River and its tributaries and its overflow waters for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes, for recreational uses, for flood control, timber development, irrigation, and pollution abatement are, as a matter of public policy, for the general welfare of the entire people of the state.

The creation of the Pearl River Valley Water Supply District is determined to be necessary and essential to the accomplishment of the aforesaid purposes, and this article operates on a subject in which the state at large is interested. All the terms and provisions of this article are to be liberally construed to effectuate the purposes herein set forth, this being a remedial law.

SOURCES: Codes, 1942, § 5956-52; Laws, 1958, ch. 197, § 2, eff from and after passage (approved May 5, 1958).

ATTORNEY GENERAL OPINIONS

The provisions of Chapter 169, Laws of 1956 and Chapter 197, Laws of 1958 are applicable in determining the original purposes of the Ross Barnett Reservoir. Moak, July 25, 1997, A.G. Op. #97-0445.

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

§ 51-9-105. General authority to organize.

The Pearl River Valley Water Supply District may hereafter be organized in this state under the provisions of this article, in the manner hereinafter provided. This water supply district shall be an agency of the state and a body politic and corporate, and may be composed of one or more entire counties.

SOURCES: Codes, 1942, § 5956-53; Laws, 1958, ch. 197, § 3, eff from and after passage (approved May 5, 1958).

JUDICIAL DECISIONS

1. In general.

In creating the Pearl River Valley Water Supply District, the legislature did not intend to establish a state agency with authority to deprive a citizen of the enjoyment of his property, unless the same was necessary to accomplish some lawful purpose of the act. Warwick v. Pearl River Valley Water Supply Dist., 246 So. 2d 525 (Miss. 1971).

The Pearl River Valley Water Supply District is an agency of the state, and therefore its actions in promulgating rules and regulations for carrying out its purposes are subject to judicial review. Warwick v. Pearl River Valley Water Supply Dist., 246 So. 2d 525 (Miss. 1971).

Where plaintiff's property was surrounded by that of a public water supply district so that there was no access to the property other than across the lands of the district, the action of the district in denying the plaintiff access to his land was arbitrary, and the district was directed to designate a point upon its lands abutting a public road as a way of necessity for ingress and egress to plaintiff's land. Warwick v. Pearl River Valley Water Supply Dist., 246 So. 2d 525 (Miss. 1971).

§ 51-9-107. Board of directors.

All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) Each member of the Pearl River Industrial Commission whose county becomes a part of the Pearl River Valley Water Supply District shall be a member of the Board of Directors of the Pearl River Valley Water Supply District. Such directors shall serve on this board during their term of office on the Pearl River Industrial Commission. In addition, the board of supervisors of each county that becomes a part of the district shall appoint one (1) additional member, who shall serve for a term concurrent with the terms of the members of the board of supervisors. The members shall be appointed at the first meeting of the board of supervisors in January after the supervisors take office. The members appointed from Madison County and Rankin

County shall be persons who reside on and are holders of residential leases from the Pearl River Valley Water Supply District that are located in Madison County and Rankin County, respectively, or who reside in established subdivisions in Madison County and Rankin County, respectively, in which some of the residential property of the subdivision is leased from the Pearl River Valley Water Supply District.

The members appointed from Madison County and Rankin County who are serving on July 1, 2012, shall continue to serve until January 1, 2013, after which date the Board of Supervisors of Madison County and the Board of Supervisors of Rankin County each shall appoint one (1) member who meets the residency requirements of this section. The persons appointed under the provisions of this paragraph shall serve for the remainder of the unexpired term.

(b) The Mississippi Commission on Environmental Quality, the Mississippi Commission on Wildlife, Fisheries and Parks, Forestry Commission and the State Board of Health of the State of Mississippi shall each appoint one (1) director from that department to serve on the Board of Directors of the Pearl River Valley Water Supply District to serve at the pleasure of the respective board appointing him. From and after January 1, 2013, each of the members appointed under this paragraph (b) shall be a person who resides on and is a holder of a residential lease from the Pearl River Valley Water Supply District.

(c) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the clerk and by him preserved.

(d) Each director shall receive per diem compensation in the amount as provided in Section 25-3-69 for attending each meeting of the board and for each day spent in attending to the necessary business of the district and shall be reimbursed for actual expenses thus incurred upon express authorization of the board, including travel expenses, as provided in Section 25-3-41.

(e) The board of directors shall annually elect from its number a president and a vice president of the district, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine those offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), and the premiums on those bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of office and account for all money which shall come into his custody as treasurer or director of the district.

SOURCES: Codes, 1942, § 5956-54; Laws, 1958, ch. 197, § 4; Laws, 1981, ch. 402, § 1; Laws, 2000, ch. 516, § 90; Laws, 2012, ch. 549, § 2, eff from and after July 1, 2012.

§ 51-9-109. Petition for creation of district.

The Pearl River Industrial Commission, acting through it members who favor bringing the counties they represent into the Pearl River Valley Water Supply District, shall petition the chancery court of the First Judicial District of Hinds County to organize and establish the Pearl River Valley Water Supply District and shall set forth in the petition:

(a) The counties to be included in the Pearl River Valley Water Supply District. Any county through which the Pearl River runs or which borders on the Pearl River may be included in the district.

(b) The fact that a preliminary report or study to determine the engineering feasibility of constructing a dam and reservoir in the basin of Pearl River has been made by a competent engineer or engineering firm and that such study or report shows that the construction of such facilities is feasible for water conservation or supply or for any of the other purposes or services contemplated by the legislative declaration of public policy in this article.

(c) The necessity and desirability for the construction of such facilities.

(d) A general description of the purposes of the contemplated works, and a general description of the plan including the lands to be overflowed or otherwise affected thereby, and maps or plats showing the general location of the reservoir and dam and related facilities. The word "project" when used herein shall mean the general plan and purposes of the Pearl River Valley Water Supply District, including its physical properties, as set out in this petition to the chancery court; and the words "project area" shall mean the physical location of the reservoir, dam, and related facilities as shown on the plats filed with the chancery court and shall include and be limited to an area of one mile from the shore line of the reservoir at high water. The words "related facilities" as used in this article shall mean the facilities indicated on said maps or plats filed with the chancery court or otherwise explained in the pleadings filed with the chancery court and shall include property, land, or areas of land adjacent to, or in the vicinity of, said reservoir or dam and within a distance of one mile from the high water mark of the proposed shore line of said reservoir as shown on said map, which may be acquired, owned, rented, leased, or sold by the district in connection with the recreational or industrial development and use of the project.

The petition shall be filed with as many copies as there are parties defendant. A copy of the preliminary report or study shall be attached to the original and each copy of the petition as an exhibit.

The board of water commissioners shall be made a party defendant, and the chancery clerk shall furnish the board of water commissioners with a copy of the petition with attached exhibits. Each county named in the petition shall be joined as a party defendant by service of process on the president of the board of supervisors thereof, and the chancery clerk shall furnish a copy of the petition to each such president. Whenever any municipality having a population according to the most recent federal census of ten thousand (10,000) or more is included in such proposed district, such municipality shall be made a party defendant.

It shall not be necessary that any land owners in the counties to be included in said proposed district be named in the petition, or made parties defendant. The chancellor of the chancery court of the First Judicial District of Hinds County, Mississippi, shall have jurisdiction of the entire water supply district and project area for the purposes of this article. Such jurisdiction may be exercised by the chancellor in term time or in vacation, as provided in this article.

SOURCES: Codes, 1942, § 5956-55; Laws, 1958, ch. 197, § 5, eff from and after passage (approved May 5, 1958).

JUDICIAL DECISIONS

1. In general.

Under that portion of subsection (d) defining "project area" as including and limited to an area of one mile from the shoreline of the reservoir at high water, on that part of the 30,000 acre reservoir bounded by the dam, the dam itself is the shoreline. Wright v. Pearl River Valley Water Supply Dist., 250 Miss. 645, 167 So. 2d 660 (1964).

§ 51-9-111. Proceedings after petition filed.

The board of water commissioners shall make a written report on the preliminary study or plans furnished them and shall, within thirty days after receipt of the said study, file such report with the chancery court setting forth their recommendations concerning the proposed water supply district. After the filing of the report of the board of water commissioners, and upon motion of the petitioners, the chancellor shall enter an order fixing the date for a hearing of the cause on the original petition, the exhibit, the report and recommendations of the board of water commissioners, and any answers filed or other pleadings. The chancery clerk shall give notice of such hearing to all persons interested by posting notices thereof at the door of the courthouse of the county or counties in which the district is situated and in at least ten public places in said proposed district, and also by publishing said notice at least once a week for three consecutive weeks in a newspaper published in Hinds County and in a newspaper published in each of the other counties proposed to be included in such water supply district. If there is no newspaper published in any such county, then it shall be sufficient to publish said notice in a newspaper having a general circulation in such county. Such notice shall be addressed to the property owners and qualified electors of such proposed district and all other persons interested, shall state when and in what court said petition was and is filed, shall state the counties included in such district, and shall command all such persons to appear before the chancery court, or the chancellor in vacation, at the Chancery Court Building in the First Judicial District of Hinds County, upon the date fixed by the chancellor to show cause, if any they can, why the proposed water supply district should not be organized and established as prayed for in said petition. The date of such hearing shall not be less than twenty-one days nor more than forty days after the last publication of such notice. It shall be sufficient in describing the lands to be included in the water supply district to name the counties to be included therein in the publication or notice hereinbefore mentioned.

If the court or chancellor finds that the notice or publication was not given as provided for in this article, it shall not thereby lose jurisdiction, but the court or chancellor shall order due publication or notice to be given and shall continue the hearing until such publication or notice shall be properly given, and the court or chancellor shall thereupon proceed as though publication or notice had been properly given in the first instance.

SOURCES: Codes, 1942, § 5956-56; Laws, 1958, ch. 197, § 6, eff from and after passage (approved May 5, 1958).

§ 51-9-113. Hearing.

The chancery court of the First Judicial District of Hinds County may hear the petition at any term thereof, or the chancellor of said court may fix a time to hear such petition at any time in vacation, and may determine all matters pertaining thereto, may adjourn the hearing from time to time, and may continue the case for want of sufficient notice or other good cause. If said petition shall prove defective in any manner, the petitioners, upon motion, shall be permitted to amend the same.

Upon the day set for hearing said petition, or a day to which same may be continued by the court or chancellor, all parties interested may appear and contest the same. If upon the hearing of such petition, it is found that such project is feasible from an engineering standpoint and practical, and if the creation of the water supply district under the terms of this article would meet a public necessity both local and statewide and would be conducive to the public welfare of the state as a whole, such court or chancellor shall so find and shall make and enter an order upon the minutes of the said chancery court stating that the said district to be known as the Pearl River Valley Water Supply District, should be organized subject to all of the terms and provisions of this article.

If the chancellor finds that the proposed water supply district should not be organized, he shall dismiss the proceedings, and the costs shall be paid by the Pearl River Industrial Commission.

SOURCES: Codes, 1942, §§ 4956-57, 5956-58; Laws, 1958, ch. 197, §§ 7, 8, eff from and after passage (approved May 5, 1958).

§ 51-9-115. Order and notice of election.

If the court or chancellor thereof finds that the proposed water supply district should be organized, the chancellor shall then order an election in each county in the proposed district, which election shall be held not less than twenty-one nor more than forty-five days from the date of such order, whereby the qualified electors within such counties may determine if such county shall be a part of such proposed district; and such order for an election shall be interlocutory and not appealable. A substantial copy of the court order shall be published once a week for at least three consecutive weeks in at least one newspaper published in each county in such district. If there is no newspaper published in any such county, then it shall be sufficient to publish said notice in a newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days following the issuance of such order at three public places in such county. Notice of the election shall be given by publishing a substantial copy of the court order providing for the election once a week for at least three consecutive weeks, in at least one newspaper published in each county in which an election is to be held. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election. If no newspaper is published in any such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county.

SOURCES: Codes, 1942, § 5956-58; Laws, 1958, ch. 197, § 8, eff from and after passage (approved May 5, 1958).

§ 51-9-117. Election.

Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such counties may vote, and the ballots used at such election shall have printed thereon the words "FOR BEING INCLUDED IN THE PEARL RIVER VALLEY WATER SUPPLY DISTRICT" and "AGAINST BEING INCLUDED IN THE PEARL RIVER VALLEY WATER SUPPLY DISTRICT"; and the voter shall vote by placing a cross (x) or check mark (√) opposite his choice on the proposition. In any particular county, should a majority of the qualified electors voting in such election in such county vote in favor of the creation of the Pearl River Valley Water Supply District, then that county shall become a part of the water supply district. The chancery court of the First Judicial District of Hinds County, or the chancellor thereof in vacation, shall thereupon enter a final order including such county in the district. In any particular county, should a majority of the qualified electors voting in such election in such county vote against being included in the Pearl River Valley Water Supply District, then that county shall not become a part of the water supply district.

SOURCES: Codes, 1942, § 5956-59; Laws, 1958, ch. 197, § 9, eff from and after passage (approved May 5, 1958).

Cross References — Time of elections generally, see Miss. Const. Art. 4, § 102 and Art. 12, § 252.

§ 51-9-119. Appeals.

Any person interested in or aggrieved by the final order of the court or the chancellor, creating the water supply district or dismissing the petition or admitting a county to the district, and who was a party to the proceedings in the chancery court may prosecute an appeal therefrom within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars ($500.00) with two good and sufficient sureties, conditioned to pay all costs of the appeal in the event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk. When the transcript of the record of the case shall be filed in the office of the supreme court, the appellee having been summoned to appear and answer the appeal, ten days after service of the summons on appellee or his attorney the court shall consider such case as entitled to be heard. Any party to any proceeding in any court involving any of the provisions of this article may waive any time for filing pleadings so as to obtain an earlier hearing.

Any appeal from such order or decree of the chancery court or chancellor shall be a preference case in the supreme court and shall be tried at the earliest moment convenient with said court.

SOURCES: Codes, 1942, § 5956-60; Laws, 1958, ch. 197, § 10, eff from and after passage (approved May 5, 1958).

§ 51-9-121. Powers of district.

The Pearl River Valley Water Supply District through its board of directors is hereby empowered:

(a) To impound overflow water and the surface water of the Pearl River or its tributaries within the project area, within or without this district at the place or places and in the amount as may be approved by the Office of Land and Water Resources of the State of Mississippi, by the construction of a dam or dams, reservoir or reservoirs, works, plants, and any other necessary or useful related facilities contemplated and described as a part of the project within or without the district, to control, store, and preserve these waters, and to use, distribute, and sell the same. The Pearl River Valley Water Supply District is also empowered to construct or otherwise acquire within the project area all works, plants, or other facilities necessary or useful to the project for the purpose of processing the water and transporting it to cities and others for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes and is hereby given the power to control open channels for water delivery purposes.

(b) To acquire and develop any other available water necessary or useful to the project and to construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(c) To prevent or aid in the prevention of damage to person or property from the waters of the Pearl River or any of its tributaries.

(d) To forest and reforest, and to aid in the foresting and reforesting of the project area, and to prevent and aid in the prevention of soil erosion and floods within this area; to control, store, and preserve within the boundaries of the project area the waters of the Pearl River or any of its tributaries, for irrigation of lands and for prevention of water pollution.

(e) To acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges, and functions conferred upon the district by this article.

(f) To acquire by condemnation all property of any kind, real, personal, or mixed, or any interest therein within the project area not exceeding one-quarter (¼) mile from the outside line of the three hundred (300) feet above sea level contour on each side of Pearl River except as provided for rights-of-way under subsection (g) of this section, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges, and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone, or telegraph companies. For the purposes of carrying out this article, the right of eminent domain of the district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power, and other companies or corporations, and shall be sufficient to enable the acquisition of county roads, state highways, or other public property in the project area and the acquisition, or relocation, of the above mentioned utility property in the project area; however, Mississippi Highway 43 as presently located shall be kept open as part of the state highway system. The cost of right-of-way purchases, rerouting, and elevating all other county maintained roads affected by construction of the reservoir shall be borne by the water district, and new construction shall be of equal quality as in roads existing as of May 5, 1958. The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area; sand and gravel shall not be considered as minerals within the meaning of this section; and

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing, or producing oil or gas with necessary rights-of-way for ingress and egress, pipe lines, and other means of transporting these products by reason of the inclusion of such lands or mineral interests within the project area, whether below or above the water line; but any such activities shall be under such reasonable regulations by the board of directors as will adequately protect the reservoir; and

(iii) In drilling and developing, these persons are hereby vested with a special right to have the mineral interest integrated and their lands developed in such drilling unit or units as the State Oil and Gas Board shall establish after due consideration of the rights of all of the owners to be included in the drilling unit.

Moreover, where any site or plot of land is to be rented, leased, or sold to any person, firm, or corporation for the purpose of operating recreational facilities thereon for profit, then the board shall, by resolution, specify the terms and conditions of the sale, rental, or lease, and shall advertise for public bids thereon. When bids are received, they shall be publicly opened by the board, and the board shall thereupon determine the highest and best bid submitted and shall immediately notify the former owner of the site or plot of the amount, terms, and conditions of the highest and best bid. The former owner of the site or plot shall have the exclusive right at his option, for a period of thirty (30) days after the determination of the highest and best bid by the board, to rent, lease, or purchase said site or plot of land by meeting such highest and best bid and by complying with all terms and conditions of the renting, leasing, or sale as specified by the board. However, the board shall not in any event rent, lease, or sell to any former owner more land than was taken from the former owner for the construction of the project, or one-quarter (¼) mile of shoreline, whichever is the lesser. If this option is not exercised by the former owner within a period of thirty (30) days, then the board shall accept the highest and best bid submitted.

Any bona fide, resident householder, actually living or maintaining a residence on land taken by the district by condemnation shall have the right to repurchase not exceeding forty (40) acres of his former land or other available land from the board of directors for a price not exceeding the price paid for condemning his land.

(g) To require the necessary relocation of roads and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of the relocation. It is further provided that the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of the roads, highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities, and to convey the same to the owners thereof in connection with the relocation as a part of the construction of the project; however, the directors of the district shall not close any public access road to the reservoir existing prior to the construction of the reservoir unless the board of supervisors of the county in which the road is located agrees.

(h) To overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(i) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate facilities of any kind within the project area necessary or convenient to the project and to the exercise of such powers, rights, privileges, and functions.

(j) To sue and be sued in its corporate name.

(k) To adopt, use, and alter a corporate seal.

(*l*) To make bylaws for the management and regulation of its affairs.

(m) To employ engineers, attorneys, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and facilities of the district and carry out the provisions of this article, and to pay reasonable compensation for the services. For all services in connection with the issuance of bonds as provided in this article, the attorney's fee shall not exceed one-quarter of one percent (¼ of 1%) of the principal amount of said bonds. For any other services, only reasonable compensation shall be paid for these services. The board shall have the right to employ a general manager, who shall, at the discretion of the board, have the power to employ and discharge employees. Without limiting the generality of the foregoing, it may employ fiscal agents or advisors in connection with its financing program and in connection with the issuance of its bonds.

(n) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this article.

(o) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(p) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to these agencies for grants to construct, maintain, or operate any project or projects which hereafter may be undertaken or contemplated by the district.

(q) To do any other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by this article or any other law.

(r) To make contracts in the issuance of bonds that may be necessary to insure the marketability thereof.

(s) To enter into contracts with municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities or commodities that the project may provide. The district is also authorized to contract with any municipality, corporation, or public agency for the rental, leasing, purchase, or operation of the water production, water filtration or purification, water supply and distributing facilities of the municipality, corporation, or public agency upon such consideration as the district and such entity may agree. Any such contract may be upon any terms and for any time as the parties may agree, and it may provide that it shall continue in effect until bonds specified therein and refunding bonds issued in lieu of these bonds are paid. Any contract with any political subdivision shall be binding upon said political subdivision according to its terms, and any municipalities or other political subdivisions shall have the power to enter into such contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of the municipality or other political subdivision. These contracts may include, within the discretion of the governing authorities, a pledge of the full faith and credit of the political subdivisions for the performance thereof.

(t) To fix and collect charges and rates for any services, facilities, or commodities furnished by it in connection with the project, and to impose penalties for failure to pay these charges and rates when due.

(u) To operate and maintain within the project area with the consent of the governing body of any city or town located within the district, any works, plants, or facilities of any city deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(v) Subject to the provisions of this article, from time to time to lease, sell, or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(w) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, then the board shall advertise these lands for sale to the highest and best bidder for cash and shall receive and publicly open the bids thereon. The board shall, by resolution, determine the highest and best bid submitted for such land and shall thereupon notify the former owner, his heirs or devisees, by registered mail of the land to be sold and the highest and best bid received therefor, and the former owner, or his heirs or devisees, shall have the exclusive right at his or their option for a period of thirty (30) days in which to meet the highest and best bid and to purchase the property.

(x) In addition to, or in conjunction with, any other powers and duties of the district arising under this chapter, to exercise those powers, duties and functions of a joint water management district set forth in Sections 51-8-27 through 51-8-55, except the power of eminent domain under Section 51-8-33. Before exercising those powers and duties, the district must comply with the provisions of Sections 51-8-63 and 51-8-65. In exercising the functions of a joint water management district, the district may apply to the Environmental Quality Permit Board for delegation of those powers and duties as provided by Section 51-3-15, and to apply to the Mississippi Commission on Environmental Quality for delegation of those powers and duties provided by Section 51-3-21.

Any transaction regarding any property under the provisions of this section shall be executed in accordance with the provisions of Section 29-1-1.

SOURCES: Codes, 1942, § 5956-61; Laws, 1958, ch. 197, § 11; Laws, 1993, ch. 615, § 7; Laws, 1995, ch. 616, § 4, eff from and after July 1, 1995.

Cross References — Taking of private property for public use, see MS Const. Art. 3, § 17.

Right of eminent domain generally, see § 11-27-1 et seq.

Power of board of directors to issue bonds, see § 51-9-133.

Appointment of security officers for the Pearl River Valley Water Supply District, see § 51-9-175.

JUDICIAL DECISIONS

1. In general.

Corporate political subdivision of state is immune under doctrine of sovereign immunity from suit by swimmer injured as result of dive into shallow water; right of water supply district to "sue and be sued" does not constitute waiver of sovereign immunity; purchase of liability insurance does not constitute waiver of sovereign immunity. Dumas v. Pearl River Basin Dev. Dist., 621 F. Supp. 960 (S.D. Miss. 1985).

Where all the land involved in the suit was below the 300-foot above sea level contour line, it came within the terms of the statute, and could be condemned as needed for reservoir uses. Wright v. Pearl River Valley Water Supply Dist., 250 Miss. 645, 167 So. 2d 660 (1964).

Within the project area the Pearl River Valley Water Supply District is authorized to purchase land or any interest therein, but it limited in condemning land by eminent domain to land in the project area not exceeding one-fourth mile from the outside line of the 300-foot above sea level contour on each side of the river. Wright v. Pearl River Valley Water Supply Dist., 250 Miss. 645, 167 So. 2d 660 (1964).

The Pearl River Water Supply District may condemn land for the relocation of the Natchez Trace Parkway and for use for the accommodation of visitors. Brown v. Pearl River Valley Water Supply Dist., 249 Miss. 697, 163 So. 2d 732 (1964).

This section [Code 1942, § 5956-61] authorizes the taking of land within the specified distance of a contour line established by the backing up of water in a Pearl River tributary. Pearl River Valley Water Supply Dist. v. Wood, 248 Miss. 748, 160 So. 2d 917 (1964).

ATTORNEY GENERAL OPINIONS

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

The Pearl River Valley Water Supply District is not subject to the zoning ordinances and building codes of the counties or municipalities in which the district is located. Clark, May 20, 2004, A.G. Op. 04-0195.

Provisions of Section 51-9-121 allow a water supply district to add mosquito control services as a separate item on its water bills and to collect same. Water or other services could not be disconnected for failure to pay the mosquito control charge. Clark, Sept. 30, 2005, A.G. Op. 05-0460.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-9-122. Renewal of residential property leases in district.

(1) At any time more than fifteen (15) years after the commencement date of any residential lease from the district, the leaseholder shall have the option to renew and extend the lease for a new sixty-year term by giving the district notice of his exercise of this option to renew.

(2) At any time after the first fifteen (15) years of the term of any residential lease, the then present lessee may obtain from the district a new sixty-year lease on the terms and conditions contained in the then current lease form approved for use in residential leases with the exception of rent. Rent under such sixty-year leases will be payable on the same annual payment date as rent under the lease being renewed. The maximum annual rental under the new lease will be determined by the district as follows:

(a) Renewal of Leases with Fixed Rental (non-escalating): The district will recompute the annual rental due under the lease being renewed as if the lease had contained annual rents at the fixed amount stated in the lease for the first ten-year period, escalating thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five-year period. The annual rental which would have been payable as of the renewal date will be the annual rent payable for the first ten-year period of the renewed lease. Annual rental will escalate thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years. Recomputed annual rental will be payable from and after the first day of the renewed lease term and not for the period prior to renewal.

(b) Renewal of Leases with Escalating Rental: Annual rental will remain payable in accordance with the terms of the lease being renewed with rental continuing to escalate at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years during the renewed term.

(3) The district will charge a reasonable non-refundable fee for preparation of the renewal lease. The Lessee will be responsible for obtaining the consent of any mortgage holder to the lease modification.

(4) At any time a lessee is found to be in default or in breach of the terms and conditions contained in the lease, the district shall give thirty (30) days written notice to such lessee before terminating the lease. Such notice shall be by certified mail and shall specifically state the default or breach. If the lessee does not cure the default or breach within thirty (30) days of such notice, then the district shall give written notice to the holder of any mortgage or deed of trust on the leasehold and such holder shall thereupon have thirty (30) days to cure the default or breach before the lease is terminated.

SOURCES: Laws, 1993, ch. 389, § 1, eff from and after passage (approved March 16, 1993).

§ 51-9-122.1. Authority of board of directors to renegotiate nonresidential leases upon expiration.

(1) Any holder of a lease that is not a residential lease subject to Section 51-9-122, Mississippi Code of 1972, shall have the right, exclusive of all other persons, to renew the lease at fair market value at any time prior to expiration of the lease.

(2) Other than the right of a lessee to renew at fair market value, nothing in this section is intended to limit or restrict the right of the district to negotiate terms of any lease in furtherance of any of the purposes authorized by this section and in a manner deemed favorable to the district by the board of directors.

(3)(a) Prior to entering into any lease under this section, whether a new or renewal lease, the district shall obtain at least one (1) appraisal from a competent appraiser establishing the fair market rental value of the land, exclusive of improvements made by the leaseholder or any predecessor in title, and, except as otherwise provided in paragraph (b) of this subsection, the land shall not be leased for an amount less than the fair market rental as determined by the appraiser and approved by the board. The district may require such other terms as it deems advisable. The cost of the appraisal shall be paid by the district and may be included in the costs of lease renewal to be reimbursed by the lessee.

(b) The lessee may obtain an appraisal from a certified real estate appraiser establishing the fair market rental value of the land. If the fair market rental value of the land established in such appraisal differs from the fair market rental value of the land established in the appraisal obtained by the district, the land shall not be leased for an amount less than the average of the fair market rental value established by the two (2) appraisals.

(4) For the purposes of this section, "terms" means rent, rent escalation clauses, rental adjustment periods and method of determination, term of years, permitted use, condition of improvements, removal of improvements, and compliance with district rules and regulations.

(5) In the event a lessee has not obtained a new lease pursuant to the provisions of this section, any preemptive right of the lessee to lease the property shall be extinguished upon expiration of the lease, and, at the direction of the district, the lessee shall remove all improvements and other structures on the property immediately upon termination of the lease.

SOURCES: Laws, 2002, ch. 485, § 1, eff from and after July 1, 2002.

§ 51-9-123. Construction contracts.

All construction contracts by the district, where the amount of the contract shall exceed two thousand five hundred dollars ($2,500.00), shall be made upon at least three weeks' public notice by advertisement in a newspaper of general circulation in the district, which notice shall state the thing to be done and invite sealed proposals, to be filed with the secretary of the district, to do the work; and in all such cases, before the notice shall be published, the plans and specification for the work shall be filed with the secretary of the district and there remain. The board of directors of the district shall award the contract to the lowest bidder, who will comply with the terms imposed by such board and enter into bond with sufficient sureties, to be approved by the board, in such penalty as shall be fixed by such board, but in no case to be less than the contract price, conditioned for the prompt, proper, and efficient performance of the contract.

SOURCES: Codes, 1942, § 5956-62; Laws, 1958, ch. 197, § 12, eff from and after passage (approved May 5, 1958).

§ 51-9-125. Park and recreation facilities.

The Pearl River Valley Water Supply District is authorized to establish or otherwise provide for public parks and recreation facilities and for the preservation of fish and wildlife and to acquire land otherwise than by condemnation except as provided in subsection (f) of Section 51-9-121, for such purposes, within the project area.

SOURCES: Codes, 1942, § 5956-63; Laws, 1958, ch. 197, § 13, eff from and after passage (approved May 5, 1958).

§ 51-9-127. Rules and regulations.

(1) The board of directors of the district shall have the power to adopt and promulgate all reasonable regulations to secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district, to prevent waste of water or the unauthorized use thereof, and to regulate residence, hunting, fishing, boating, camping, circulation of vehicular traffic on land, the parking of such vehicles, and all recreational and business privileges in, along, or around any such reservoir, any body of land, or any easement owned by the district.

(2) All such regulations prescribed by the board of directors, after publication in a daily newspaper of statewide circulation and in a newspaper of general circulation in each county comprising the area of the district, shall have the full force and effect of law; and violation thereof shall be punishable by fine not to exceed One Thousand Dollars ($1,000.00), as may be prescribed in such regulations, or by imprisonment not to exceed fifteen (15) days, or both the amount of the fine and the term of the imprisonment, within the maximum limit set by this statute and within the maximum limit prescribed in such regulations, to be determined by the court.

All such rules and regulations so prescribed and the penalties fixed thereunder relating to hunting, fishing, and boating shall not conflict with, exceed, alter, or suspend any regulations, rules, or penalties prescribed by general statute or by the Mississippi Commission on Wildlife, Fisheries and Parks; and all fines and penalties levied and collected under this article shall be remitted and accounted for in accordance with the general statutes relating thereto.

(3) In the event of a violation of any regulation adopted to prevent pollution of the waters in any reservoir owned by the district, or the threat of continuous violation thereof, the district shall have authority to sue for and obtain damages and other appropriate relief, including injunctive relief.

SOURCES: Codes, 1942, § 5956-64; Laws, 1958, ch. 197, § 14; Laws, 1964, ch. 250, § 1; Laws, 2000, ch. 516, § 91, eff from and after passage (approved Apr. 30, 2000.)

Cross References — Regulation of boats and other vessels, see § 59-21-1 et seq.

§ 51-9-129. Appropriation permit.

The district is empowered to obtain through appropriate hearings an appropriation permit or permits from the board of water commissioners of the State of Mississippi, as provided for in Section 51-3-31.

SOURCES: Codes, 1942, § 5956-65; Laws, 1958, ch. 197, § 15, eff from and after passage (approved May 5, 1958).

§ 51-9-131. State tax used for water supply district fund.

In each county of the State of Mississippi which is part of the Pearl River Valley Water Supply District, beginning with the ad valorem tax assessment for the calendar year 1960, payable on or before February 1, 1961, and so long as any bonds issued hereunder are outstanding, the tax collector of said county shall pay into the depository selected by said water district for said purpose the amount of two mills of all ad valorem taxes due by said county to the State of Mississippi which is collected by the tax collector of said county, which may be collected by any other lawful taxing agency of said county and state and for said county, and the State of Mississippi shall continue to levy not less than two mills ad valorem taxes on each county in the district so long as any bonds issued pursuant to this article remain outstanding.

SOURCES: Codes, 1942, § 5956-66; Laws, 1958, ch. 197, § 16, eff from and after passage (approved May 5, 1958).

Cross References — Details of bonds issued pursuant to this article, see § 51-9-135.

Limitation on expenditure of money, including taxes levied under this section, by the Pearl River Valley Water Supply District for purposes within the ambit of the Metropolitan Area Water Supply Act (§ 51-9-189 et seq.), see § 51-9-201.

JUDICIAL DECISIONS

1. In general.

The chancellor erred in permanently enjoining a water supply district, which was authorized and empowered by § 51-9-133 to issue bonds for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing and maintaining a reservoir, from using any state ad valorem tax proceeds diverted to the district by § 51-9-131 for any purpose other than paying, prepaying, redeeming, or retiring bonds, and further erred in enjoining the district from making a special levy under § 51-9-139 in any year that the state ad valorem taxes paid to the district exceeded the amount of the district's debt service, since the water supply district was not required to use state ad valorem tax proceeds only for purposes of retirement of the district's bonded indebtedness, and, if there were not a sufficient amount remaining from those funds after deduction of the cost of operating and maintaining the project and related facilities, and application of the balance to the retirement of the bonds, the board of directors had authority to assess an additional special levy of not more than two mills also to be applied toward the retirement of bonds. Pearl River Valley Water Supply Dist. v. Hinds County, 445 So. 2d 1330 (Miss. 1984).

ATTORNEY GENERAL OPINIONS

Water District has clear authority to provide police patrol and other public services to entire reservoir area. Bryant, Feb. 2, 1994, A.G. Op. #93-0911.

§ 51-9-133. Board of directors to issue bonds.

The board of directors of the district is hereby authorized and empowered to issue bonds of the district for the purpose of paying the costs of acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified herein, including related facilities, and including all financing and financial advisory charges, interest during construction, engineering, legal, and other expenses incidental to and necessary for the foregoing, or for the carrying out of any power conferred by this article. Said board of directors is authorized and empowered to issue such bonds at such times and in such amounts as shall be provided for by resolution of the said board of directors, not to exceed the limitation prescribed in Section 51-9-137. All such bonds so issued by said district shall be secured solely by a pledge of the net revenues which may now or hereafter come to the district, by the pledge of the avails of the two mill ad valorem tax levy provided for in Section 51-9-131, and by the pledge of the special tax levy of two mills provided for in Section 51-9-139; and such bonds shall not constitute general obligations of the State of Mississippi or of the counties comprising said district, and shall not be secured by a pledge of the full faith, credit, and resources of said state or of said counties. Bonds of the district shall not be included in computing any present or future debt limit of any county in such district under any present or future law. "Revenues" as used in this article shall mean all charges, rentals, tolls, rates, gifts, grants, tax proceeds, moneys, and all other funds coming into the possession of the district by virtue of the provisions of this article, except the proceeds from the sale of bonds issued hereunder. "Net revenues" as used in this article shall mean the revenues after payment of costs and expenses of operation and maintenance of the project and related facilities.

SOURCES: Codes, 1942, § 5956-67; Laws, 1958, ch. 197, § 17, eff from and after passage (approved May 5, 1958).

Cross References — Additional powers conferred in connection with issuance of bonds, see §§ 31-21-5 and 51-9-135.

Details of bonds issued pursuant to this article, see § 51-9-135.

JUDICIAL DECISIONS

1. In general.

The chancellor erred in permanently enjoining a water supply district, which was authorized and empowered by § 51-9-133 to issue bonds for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing and maintaining a reservoir, from using any state ad valorem tax proceeds diverted to the district by § 51-9-131 for any purpose other than paying, prepaying, redeeming, or retiring bonds, and further erred in enjoining the district from making a special levy under § 51-9-139 in any year that the state ad valorem taxes paid to the district exceeded the amount of the district's debt service, since the water supply district was not required to use state ad valorem tax proceeds only for purposes of retirement of the district's bonded indebtedness, and, if there were not a sufficient amount remaining from those funds after deduction of the cost of operating and maintaining the project and related facilities, and application of the balance to the retirement of the bonds, the board of directors had authority to assess an additional special levy of not more than two mills also to be applied toward the retirement of bonds. Pearl River Valley Water Supply Dist. v. Hinds County, 445 So. 2d 1330 (Miss. 1984).

§ 51-9-135. Details of bonds; supplemental powers conferred in issuance of bonds.

All bonds provided for by Sections 51-9-133 and 51-9-145 of this article shall be negotiable instruments within the meaning of the Uniform Commercial Code, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than one hundred dollars ($100.00) nor more than five thousand dollars ($5,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, it shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. Such bonds shall bear interest at such rate or rates, not exceeding six percent (6%) per annum, as may be determined by the sale of such bonds. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of directors. However, no bond issued under Section 51-9-133 shall have a longer maturity than forty (40) years from January 1, 1961, and the first maturity date thereof shall be not more than five (5) years from the date of such bonds. The denomination, form and place or places of payment of such bonds shall be fixed in the resolution of the board of directors of the district. Such bonds shall be signed by the president and secretary of such board with the seal of the district affixed thereto, but the coupons may bear only the facsimile signatures of such president and secretary. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

Such bonds may provide that they may be called in, paid and redeemed in inverse numerical order on any interest date prior to maturity, upon not less than thirty (30) days' notice to the paying agent or agents designated in such bonds, and at such premium as may be designated in such bonds. In no case shall any premiums exceed six percent (6%) of the face value of such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the net revenues of such district, including the avails of the two-mill ad valorem tax levy provided for in Section 51-9-131, and the avails of the special tax levy of two (2) mills provided for in Section 51-9-139, and that they do not constitute general obligations of the state of Mississippi or of the counties comprising said district, and are not secured by a pledge of the full faith, credit and resources of said state or of such counties.

All such bonds as provided for herein shall be sold at public sale as now provided by law. No such sale shall be at a price so low as to require the payment of interest on the money received therefor at more than six percent (6%) per annum computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This article shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-68; Laws, 1958, ch. 197, § 18; Laws, 1964, ch. 250, § 2; Laws, 1983, ch. 494, § 18, eff from and after passage (approved April 11, 1983).

§ 51-9-137. Limitation on amount of bonds.

Bonds issued pursuant to this article shall not exceed twenty-five million dollars ($25,000,000.00) in principal amount.

SOURCES: Codes, 1942, § 5956-69; Laws, 1958, ch. 197, § 19, eff from and after passage (approved May 5, 1958).

§ 51-9-139. Special tax levy for payment of bonds.

To provide additional funds for the payment of the principal of, interest on, and other charges in connection with bonds issued under the provisions of this article, in the event its anticipated revenue and funds are found to be insufficient therefor by order entered on its minutes each year that such tax is found necessary, a copy of which order shall be published for two consecutive weeks in a newspaper published in each county of the district thirty days before such levy is made by the board of supervisors, the district is also empowered to levy annually a special tax, not to exceed two mills upon all of the taxable property within such district, on or before the first Monday of September of each year and shall certify the levy to the boards of supervisors of the various counties in said district; and it shall be the duty of the boards of supervisors to make said levy on each tract of land or other property in said county, according to the assessed valuation thereof. Such taxes shall be collected by the tax collectors of the respective counties in said district, who shall deposit them in such depository as shall be selected by the board of directors of the district. Where bonds are issued payable wholly or partially from ad valorem taxes, it shall be the duty of the board of directors to levy a tax sufficient, together with pledged revenues other than the taxes authorized hereunder, to pay the bonds and the interest thereon as such bonds and interest become due, provided that in no event shall the tax levied exceed two mills. Any part of this levy lost through homestead exemption shall not be reimbursed by the state.

SOURCES: Codes, 1942, § 5956-70; Laws, 1958, ch. 197, § 20, eff from and after passage (approved May 5, 1958).

Cross References — Exemption of homestead from ad valorem taxes, see § 27-33-3 et seq.

Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

Details of bonds issued pursuant to this article, see § 51-9-135.

JUDICIAL DECISIONS

1. In general.

The chancellor erred in permanently enjoining a water supply district, which was authorized and empowered by § 51-9-133 to issue bonds for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing and maintaining a reservoir, from using any state ad valorem tax proceeds diverted to the district by § 51-9-131 for any purpose other than paying, prepaying, redeeming, or retiring bonds, and further erred in enjoining the district from making a special levy under § 51-9-139 in any year that the state ad valorem taxes paid to the district exceeded the amount of the district's debt service, since the water supply district was not required to use state ad valorem tax proceeds only for purposes of retirement of the district's bonded indebtedness, and, if there were not a sufficient amount remaining from those funds after deduction of the cost of operating and maintaining the project and related facilities, and application of the balance to the retirement of the bonds, the board of directors had authority to assess an additional special levy of not more than two mills also to be applied toward the retirement of bonds. Pearl River Valley Water Supply Dist. v. Hinds County, 445 So. 2d 1330 (Miss. 1984).

§ 51-9-140. Repealed.

Repealed by Laws, 1973, ch. 414, eff from and after June 30, 1974.

[En., Laws, 1968, ch. 263; Laws, 1970, ch. 294; Laws, 1971, ch. 433; Laws, 1972, ch. 402; Laws, 1973, ch. 414]

Editor's Note — Former § 51-9-140 contained provisions for the determination of whether and to what extent a special tax would be levied. Subsection (3) provided that the section would stand repealed from and after June 30, 1974, except that the repeal would not affect any litigation or prosecutions pending on said dates or prevent the filing of any litigation or commencement of any prosecutions for violation of this section that occurred prior to June 30, 1974.

§ 51-9-141. Validation of bonds.

All bonds issued pursuant to this article shall be validated as now provided by law by Sections 31-13-1 through 31-13-11, Mississippi Code of 1972. The services of the state's bond attorney may be employed in the preparation of such bond resolutions, forms, or proceedings as may be necessary, for which he shall be paid a reasonable fee. Such validation proceedings shall be instituted in the chancery court of the First Judicial District of Hinds County, Mississippi, but notice of such validation proceedings shall be published at least two times in a newspaper of general circulation and published in each of the counties comprising the Pearl River Valley Water Supply District, the first publication of which in each case shall be made at least ten days preceding the date set for the validation.

SOURCES: Codes, 1942, § 5956-71; Laws, 1958, ch. 197, § 21, eff from and after passage (approved May 5, 1958).

§ 51-9-143. Trust agreement.

At the discretion of the board of directors of the district any bonds provided for in Section 51-9-133 may be further secured by a trust agreement between the board of directors and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law. The trust agreement may contain provision for the issuance of additional bonds for any of the purposes authorized by this article, which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein. The trust agreement may include provisions to the effect that if there is any default in the payment of principal or interest on any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer the properties and facilities of the district described in the trust agreement, on behalf of the district, including authority to sell or make contracts for the sale of any services, facilities, or commodities of the district or to renew such contracts, subject to the approval of the court appointing said receiver; and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of said bonds and interest thereon in accordance with the resolution of the board of directors authorizing the issuance of such bonds and said trust agreement. The fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee upon default in the payment of principal and interest on the bonds.

SOURCES: Codes, 1942, § 5956-72; Laws, 1958, ch. 197, § 22, eff from and after passage (approved May 5, 1958).

§ 51-9-145. Refunding bonds.

The board of directors of the district is hereby authorized to provide by resolution for the issuance of refunding bonds of the district for the purpose of refunding any bonds then outstanding and issued under authority of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such refunding bonds, the maturity and other details thereof, and the rights, duties, and obligations of the board of directors and of the district in respect to such bonds shall be governed by the provisions of this article, insofar as they are applicable. In no event shall such bonds mature over a period of time exceeding forty years from January 1, 1961. No such refunding bonds shall be issued and delivered more than five years in advance of the date when the bonds to be refunded are redeemable, and not until such outstanding bonds shall have been called for redemption and notice thereof provided for as therein required. The proceeds of any such refunding bonds shall be deposited with the trustee named in the bonds to be refunded and, pending the application thereof to the payment and redemption of the bonds to be refunded, shall be invested and reinvested in obligations of or guaranteed by the United States of America and maturing or being redeemable at or prior to the time when the said bond proceeds are required for the redemption of the bonds to be refunded. All interest or other increment received on or on account of all such investments shall be deposited in and become a part of the fund held by the trustee for the payment and redemption of such refunding bonds.

SOURCES: Codes, 1942, § 5956-73; Laws, 1958, ch. 197, § 23; Laws, 1964, ch. 250, § 3, eff from and after passage (approved June 4, 1964).

§ 51-9-147. Bonds to be legal investments.

All bonds of the district shall be and are hereby declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, and for funds of the Mississippi Public Employee's Retirement System. Such bonds shall be eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

SOURCES: Codes, 1942, § 5956-74; Laws, 1958, ch. 197, § 24, eff from and after passage (approved May 5, 1958).

§ 51-9-149. Depository for funds of district.

(1) The board of directors shall designate one or more qualified state depositories within the district to serve as depositories for the funds of the district, and all funds of the district other than funds required by any trust agreement to be deposited, from time to time, with the trustee or any paying agent for outstanding bonds of the district shall be deposited in such depository or depositories. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

(2) Before designating a depository or depositories, the board of directors shall issue a notice stating the time and place the board will meet for such purpose and inviting the qualified state depositories in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. Such notice shall be published one (1) time in a newspaper or newspapers published in the district and specified by the board.

(3) At the time mentioned in the notice, the board shall consider the applications and the management and condition of the depositories filing them, and shall designate as depositories the qualified state depository or depositories which offer the most favorable terms and conditions for the handling of the funds of the district and which the board finds have proper management and are in condition to warrant handling of district funds. Membership on the board of directors of an officer or director of a depository shall not disqualify such depository from being designated as a depository.

(4) If no applications acceptable to the board are received by the time stated in the notice, the board shall designate some qualified state depository or depositories within or without the district upon such terms and conditions as it may find advantageous to the district. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

SOURCES: Codes, 1942, § 5956-75; Laws, 1958, ch. 197, § 25; Laws, 1988, ch. 473, § 11, eff from and after December 1, 1988.

§ 51-9-151. Agreements relative to federal highways.

The board of directors of the Pearl River Valley Water Supply District is hereby authorized and empowered to negotiate and contract with the United States of America, or any agency thereof, concerning all lands, easements, and rights of way necessary for the relocation of any federal road, highway, parkway, or for the facilities appurtenant thereto.

SOURCES: Codes, 1942, § 5956-76; Laws, 1958, ch. 197, § 26, eff from and after passage (approved May 5, 1958).

JUDICIAL DECISIONS

1. In general.

The Pearl River Water Supply District may condemn land for the relocation of the Natchez Trace Parkway, and for use for the accommodation of visitors. Brown v. Pearl River Valley Water Supply Dist., 249 Miss. 697, 163 So. 2d 732 (1964).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-9-153. Cooperation with other governmental agencies.

The Pearl River Valley Water Supply District shall have authority to act jointly with political subdivisions of the state and agencies, commissions, and instrumentalities thereof, with other states, with municipalities, and with the federal government and other agencies thereof, in the performance of the purposes and services authorized in this article, upon such terms as may be agreed upon by the directors.

SOURCES: Codes, 1942, § 5956-77; Laws, 1958, ch. 197, § 27, eff from and after passage (approved May 5, 1958).

§ 51-9-155. Water supply district law controlling.

The provisions of any other law, general, special or local, except as provided in this article, shall not limit or restrict the powers granted by this article. The water supply district herein provided for shall not be subject to regulation or control by the public service commission.

SOURCES: Codes, 1942, § 5956-78; Laws, 1958, ch. 197, § 28, eff from and after passage (approved May 5, 1958).

§ 51-9-157. District and its bonds exempt from taxation.

The accomplishment of the purposes stated in this article being for the benefit of the people of this state and for the improvement of their properties and industries, the district in carrying out the purposes of this article will be performing an essential public function and shall not be required to pay any tax or assessment on the project and related facilities or any part thereof, and the interest on the bonds issued hereunder shall at all times be free from taxation within this state. The state hereby covenants with the holders of any bonds to be issued hereunder that the Pearl River Valley Water Supply District shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Codes, 1942, § 5956-79; Laws, 1958, ch. 197, § 29, eff from and after passage (approved May 5, 1958).

Cross References — Tax exemptions generally, see § 27-31-1 et seq.

§ 51-9-159. Preliminary expenses.

Any municipality or county which is within the territorial limits of the district may advance funds to said district to pay the preliminary expenses, including engineers' reports, organization, or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provisions of any law to the contrary, such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing, for the purpose of making such advances. The board of directors is hereby authorized to repay any such advances from the proceeds of any bonds issued under the provisions of this article.

SOURCES: Codes, 1942, § 5956-80; Laws, 1958, ch. 197, § 30, eff from and after passage (approved May 5, 1958).

§ 51-9-161. Overflow of school lands not to constitute waste.

It is hereby declared as a matter of legislative determination that the overflow and inundation of sixteenth section lands or in lieu lands shall not constitute legal waste of such lands. The district shall pay a reasonable rental for the use of such lands to be overflowed, to be determined as provided by law in such cases. Any sixteenth section lands that have been flooded shall be reforested before this project shall ever be abandoned.

SOURCES: Codes, 1942, § 5956-81; Laws, 1958, ch. 197, § 31, eff from and after passage (approved May 5, 1958).

§ 51-9-163. Savings clause.

Nothing in this article shall be construed to violate any provision of the federal or state constitutions, and all acts done under this article shall be done in such manner as will conform thereto, whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this article shall be invalid, such fact shall not affect the creation of the district or the validity of any other provision of this article.

SOURCES: Codes, 1942, § 5956-82; Laws, 1958, ch. 197, § 32, eff from and after passage (approved May 5, 1958).

ARTICLE 5.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT RESERVOIR POLICE OFFICER LAW OF 1978.

SEC.	
51-9-171.	Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978.
51-9-173.	Definitions.
51-9-175.	Appointment; oath; badge; powers; reimbursement by district.
51-9-176.	Authority to render law enforcement services in emergency situations and participate in multijurisdictional training, law enforcement and emergency operations; command structure; reimbursement for expenses.
51-9-177.	Arrest and detention.
51-9-179.	Liability of district for acts.
51-9-181.	Bonds.
51-9-183.	Termination of authority.
51-9-185.	Waiver of sovereign immunity.

§ 51-9-171. Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978.

This article shall be cited as "The Pearl River Valley Water Supply District Reservoir Police Officer Law of 1978."

SOURCES: Laws, 1978, ch. 511, § 1; Laws, 2000, ch. 316, § 1; Laws, 2012, ch. 477, § 2, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-173. Definitions.

For purposes of this article, unless the context requires otherwise, the following terms shall have the meanings ascribed herein:

(a) "District" means the Pearl River Valley Water Supply District.

(b) "Qualified person" means a person who:

(i) Has met all the educational and training requirements of a course of study prescribed and conducted by the Mississippi Law Enforcement Officers' Training Academy; and

(ii) Is of good moral character and has not been convicted of any crime involving moral turpitude.

SOURCES: Laws, 1978, ch. 511, § 2, eff from and after passage (approved April 21, 1978).

§ 51-9-175. Appointment; oath; badge; powers; reimbursement by district.

(1) The board of directors of the district may appoint and commission qualified persons as reservoir police officers of the district. Any such reservoir police officer so appointed shall be certified by the Board on Law Enforcement Officer Standards and Training or in accordance with the Board on Law

Enforcement Officer Standards and Training and shall attain certification or recertification within one (1) year of appointment, and shall at all times be answerable and responsible to the board of directors of the district.

(2) A reservoir police officer appointed and commissioned as provided in subsection (1) of this section shall, before entering upon his duties as such officer, take the oath of office prescribed by Section 268, Mississippi Constitution of 1890, which shall be endorsed upon his commission. The commission, with the oath endorsed upon it, shall be entered in the official minute book of the district.

(3) A reservoir police officer appointed and commissioned pursuant to the provisions of this article, shall, while engaged in the performance of his duties, carry on his person a badge identifying him as a reservoir police officer of the district and an identification card issued by the district. When in uniform, each such reservoir police officer shall wear his badge in plain view.

(4) A reservoir police officer may exercise the same powers of arrest and the right to bear firearms that may be exercised by any state, municipal or other police officer in this state, but only with respect to violations of law or violations of regulations adopted pursuant to Section 51-9-127, which are committed on the property owned by the district. This includes property which is owned by the district but has been leased or rented to other parties. Any right granted under this subsection in no way relieves the requirements of appropriate affidavit and warrant for arrest from the appropriate jurisdiction and authority pursuant to the laws of this state.

(5) On behalf of each person who is trained as a reservoir police officer at the Mississippi Law Enforcement Officers' Training Academy, the district shall be required to pay to the academy at least an amount equal to the per student cost of operation of the academy as tuition.

SOURCES: Laws, 1978, ch. 511, § 3; Laws, 2000, ch. 316, § 2; Laws, 2008, ch. 480, § 1; Laws, 2012, ch. 477, § 3, eff from and after passage (approved Apr. 24, 2012.)

Cross References — Powers of the board of directors of the Pearl River Valley Water Supply District generally, see § 51-9-121.

Administration of tests for purpose of determining alcohol content of blood of persons operating motor vehicles, see § 63-11-5.

Arrests generally, see § 99-3-1-et seq.

§ 51-9-176. Authority to render law enforcement services in emergency situations and participate in multijurisdictional training, law enforcement and emergency operations; command structure; reimbursement for expenses.

At the request of a Mississippi municipality, county, other legal political subdivision of the state or a Mississippi state agency, federal agency, or under a declaration of a state of emergency or disaster by the Governor or the President of the United States, the officers of the Pearl River Valley Water Supply District Reservoir Police may render law enforcement services including search and rescue using Pearl River Valley Water Supply District Reservoir Police equipment. Officers of the Pearl River Valley Water Supply District Reservoir Police may also participate in joint multijurisdictional training exercises, multijurisdictional law enforcement operations and multijurisdictional search and rescue operations. The officers may exercise the law enforcement authority granted under Section 51-9-175 in the jurisdiction of the training, operation or emergency. The Pearl River Valley Water Supply District Reservoir Police, with the approval of the governing board, may enter into agreements with jurisdictions regarding the circumstances in which emergency assistance may be provided and administered. Unless otherwise directed by an agreement, officers will remain under the authority of the Pearl River Valley Water Supply District Reservoir Police Chief or to whomever and to what level of authority is delegated by the Pearl River Valley Water Supply District Reservoir Police Chief or by assignment through the National Incident Management System or by the stated declaration of disaster or emergency. The Pearl River Valley Water Supply District Reservoir Police may seek reimbursement for services and related expenses if available.

SOURCES: Laws, 2008, ch. 522, § 2; Laws, 2012, ch. 477, § 1, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-177. Arrest and detention.

A person arrested by a reservoir police officer shall be handled or processed in the jurisdiction in which the offense was committed, in the same manner as if the arrest had been made by a sheriff or constable. If the reservoir police officer detains any person arrested by him, he shall forthwith deliver the arrested person to the sheriff of the county in which the offense was committed, and the reservoir police officer shall have no further authority as to the custody of such arrested person.

SOURCES: Laws, 1978, ch. 511, § 4; Laws, 2000, ch. 316, § 3; Laws, 2012, ch. 477, § 4, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-179. Liability of district for acts.

The district, by the act of the appointment of any reservoir police officer, shall be liable and responsible for all acts of such reservoir police officer while he is acting or purporting to act under the provisions of this article, whether such action be authorized by this article or not; further, the district shall indemnify the State of Mississippi and any sheriff for any loss, costs or expenses incurred by virtue of any act, deed or omission committed by a reservoir police officer while he is acting or purporting to act under the provisions of this article, whether the act, deed or omission is authorized by this article or not.

SOURCES: Laws, 1978, ch. 511, § 5; Laws, 2000, ch. 316, § 4; Laws, 2012, ch. 477, § 5, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-181. Bonds.

Each reservoir police officer commissioned under this article shall file a bond in the sum of Ten Thousand Dollars ($10,000.00) with the district for the lawful and faithful performance of his duties. The cost of the bond shall be borne by the district. The filing of the bond shall not relieve the district from any civil liability it may otherwise incur in accordance with the provisions of Section 51-9-179. The district shall indemnify and hold the State of Mississippi, the Commissioner of Public Safety, and any sheriff harmless from any and all liability which any or all of them might otherwise incur for the negligent or unlawful acts of a reservoir police officer.

SOURCES: Laws, 1978, ch. 511, § 6; Laws, 2000, ch. 316, § 5; Laws, 2012, ch. 477, § 6, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-183. Termination of authority.

The powers and authority of any reservoir police officer, whether appointed or commissioned pursuant to the provisions of this article or any former law of this state, may be terminated at any time by the board of directors of the district.

SOURCES: Laws, 1978, ch. 511, § 7; Laws, 2000, ch. 316, § 6; Laws, 2012, ch. 477, § 7, eff from and after passage (approved Apr. 24, 2012.)

§ 51-9-185. Waiver of sovereign immunity.

Nothing contained herein shall be construed to waive the sovereign immunity of the State of Mississippi or the district, in whole or in part.

SOURCES: Laws, 1978, ch. 511, § 8, eff from and after passage (approved April 21, 1978).

Article 7.

Metropolitan Area Water Supply Act.

Sec.

51-9-189. Declaration of purpose; short title.
51-9-191. Definitions.
51-9-193. Additional authority of district.
51-9-195. Payments by public agencies for water supplies.
51-9-197. Adjustment of rates charged by public agencies.
51-9-201. Contracts between district and public agencies.
51-9-205. Issuance of bonds by district; sales price and other bond requirements.
51-9-207. Issuance of refunding bonds.
51-9-209. Validation of bonds; notice.
51-9-211. State not obligated with respect to bonds; limitations on obligation of district.
51-9-213. Powers of district in connection with issuance of bonds.
51-9-215. Appointment of trustee to represent bond owners; appointment of receiver.

51-9-217. Exemption of district from taxes and fees; bonds to be free from taxation; exceptions.
51-9-219. Bonds to be legal investments and to be accepted by state officers and bodies.
51-9-221. Rights and powers of district to remain unchanged while bonds are outstanding and unpaid.
51-9-225. Provisions of article to be cumulative of other statutes.
51-9-227. Severability of provisions.

§ 51-9-189. Declaration of purpose; short title.

This act is for the purpose of authorizing the Pearl River Valley Water Supply District to construct, maintain and operate a water treatment plant and regional water distribution system to ensure an adequate and sanitary water supply for the Jackson metropolitan area. This act may be cited as the "Metropolitan Area Water Supply Act".

SOURCES: Laws, 1985, ch. 428, § 2, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waterworks and Water Companies §§ 1, 2.

CJS. 94 C.J.S., Waters §§ 483-739.

§ 51-9-191. Definitions.

Words and phrases used in this article shall have meanings as follows:

(a) "Act" means the Metropolitan Area Water Supply Act (this article) as originally enacted or hereafter amended.

(b) "Board of directors" means the board of directors of the district.

(c) "Bonds" means revenue bonds, interim notes (having a maturity of three (3) years or less) and other certificates of indebtedness of the district issued under this act.

(d) "District" means the Pearl River Valley Water Supply District.

(e) "Person" means and includes the State of Mississippi, any city, town, county, political subdivision or public agency of the state or of the United States of America, and any corporation, individual, partnership, association, firm, trust estate or any other entity whatsoever.

(f) "Public agency" means any city, town, public agency or political subdivision of the state authorized by law to supply water to persons within the geographical boundaries of such city, town, public agency or political subdivision.

(g) "Water supply system" means pipelines, conduits, pumping stations and all other structures, devices and appliances appurtenant thereto, including land and right-of-way thereto, for use in transporting water to public agencies, with respect to the district, or to a point of ultimate use with respect to any other public agency.

(h) "Waterworks" means, with respect to the district, all works, plants or other facilities, including open channels, necessary for the purpose of collecting, storing, treating and transporting water to public agencies and means, with respect to any other public agency, all works, plants or other facilities necessary for the purpose of collecting, storing, treating and transporting water to persons for municipal, commercial, domestic, industrial, agricultural or manufacturing purposes.

SOURCES: Laws, 1985, ch. 428, § 3, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waterworks and Water Companies §§ 1, 2.

CJS. 94 C.J.S., Waters §§ 531-794.

§ 51-9-193. Additional authority of district.

The district, through its board of directors, in addition to any and all powers now or hereafter granted to it, is hereby empowered:

(a) To construct, operate and maintain a waterworks and water supply system in furtherance of the purposes of this act on land now owned or hereafter acquired by it for said purpose and to construct or otherwise acquire all waterworks or other facilities deemed necessary or useful for the treatment and processing of water available to it and the transportation and supplying of such water to public agencies or to the district or persons situated on land owned by the district for municipal, commercial, domestic, industrial, agricultural and manufacturing purposes.

(b) To acquire by condemnation or otherwise any and all property of any kind, real, personal, or mixed, or any interest therein, necessary or convenient to the exercise of the purposes of and the powers granted by this act. Any property acquired by condemnation shall be acquired according to the procedure otherwise provided by law for the condemnation of property by public agencies. For the purposes of this act, the right of eminent domain shall be superior and dominant to the right of eminent domain of railroad, telephone, telegraph, gas, power and other companies or corporations.

The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However:

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties; provided that sand and gravel shall not be considered as minerals within the meaning of this section; and

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting interests on any land or interest therein of the district held or used for the purposes of this act; but any such activities shall be under such reasonable regulations by the board of directors as will adequately protect the waterworks and water supply system of the district contemplated by this act.

(c) To require the necessary relocation or rerouting of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, gas pipelines and related facilities, or to require the anchoring or other protection of any of these, provided due compensation is first paid to the owners thereof or agreement is had with such owners regarding the payment of the cost of such relocation, and to acquire easements or rights-of-way for such relocation or rerouting and to convey the same to the owners of the property being relocated or rerouted in connection with the purposes of this act.

(d) To enter into contracts with any person in furtherance of any of the purposes authorized by this act upon such consideration as the board of directors and such person may agree. Any such contract may extend over any period of time, notwithstanding any provision or rule of law to the contrary, may be upon such terms as the parties thereto shall agree, and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties thereto according to its terms.

(e) To make and enforce, and from time to time amend and repeal, bylaws and rules and regulations for the management of its business and affairs and for the construction, use, maintenance and operation of any of the waterworks or water supply system under its management and control and any other of its properties.

SOURCES: Laws, 1985, ch. 428, § 4, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

78 Am. Jur. 2d, Waterworks and Water Companies §§ 1, 2.

CJS. 11 C.J.S., Bonds §§ 7-37.

94 C.J.S., Waters §§ 483-739.

§ 51-9-195. Payments by public agencies for water supplies.

Payments by any public agency for water supplies from the waterworks or water supply system owned or operated by the district shall be made from the gross receipts or revenues of the public agency's waterworks, water supply system, or of its combined waterworks, water supply, sewerage and sewage disposal systems, as may be prescribed in the contract between the public agency and the district, its successors or assigns, or as otherwise authorized by law. Such payments shall constitute an operating expense of the system or systems whose revenues are thus to be applied. No provision of this act shall be construed to prohibit any public agency, otherwise permitted by law to issue bonds, from issuing bonds in the manner provided by law for the construction, renovation, repair or development of waterworks or a water supply system or any part thereof owned or operated by such public agency. Payments made or to be made to the district pursuant to any contract authorized by this act shall not be subject to approval or review by the Mississippi Public Service Commission.

SOURCES: Laws, 1985, ch. 428, § 6, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waterworks and Water Companies §§ 1, 2.

CJS. 94 C.J.S., Waters §§ 531-794.

§ 51-9-197. Adjustment of rates charged by public agencies.

Whenever a public agency shall have executed a contract pursuant to this act and the payments thereunder are to be made either wholly or partly from the revenues of the public agency's waterworks, water supply system, sewerage system or sewage disposal system or a combination of such systems, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rates charged by the public agency for the services of such system or systems, such that the revenues therefrom together with any taxes levied in support thereof will be sufficient at all times to pay: (a) the expense of operating and maintaining such system or systems including all of the public agency's obligations to the district, its successors or assigns under such contract; and (b) all of the public agency's obligations under and in connection with revenue bonds theretofore issued, or which may be issued thereafter and secured by the revenues of such system or systems. Any such contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates are to be adjusted.

SOURCES: Laws, 1985, ch. 428, § 7, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

ALR. Amount paid by public utility of affiliate for goods or services as includible in utility's rate base and operating expenses in rate proceeding. 16 A.L.R.4th 454.

§ 51-9-201. Contracts between district and public agencies.

(1) Any public agency may, pursuant to a duly adopted resolution of the governing authority of such public agency, enter into contracts with the district for the district to acquire, construct, lease, improve, extend, operate or maintain a waterworks or water supply system or any part thereof or interest therein for the furnishing of water to the public agency; such contracts shall obligate the public agency to make payments to the district or to a trustee in amounts which shall be sufficient to enable the district to defray the expenses

of administering, operating and maintaining its waterworks and water supply system, to pay interest and principal (whether at maturity or upon sinking fund redemption) on bonds of the district issued pursuant to this act and to fund reserves for debt service, for operation and maintenance and for renewals and replacements, and to fulfill requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security agreement relating to the bonds of the district issued pursuant to this act. Any public agency shall have the power to enter into such contracts with the district as in the discretion of the governing authorities thereof would be in the best interest of such public agency. Such contracts may include a pledge of the full faith and credit of such public agency for payment of such amounts due under such contracts. Any such contract may provide for the sale or lease to or use of by the district of the waterworks, the water supply system or any part thereof of the public agency; may provide that the district shall operate the waterworks, water supply system or any part thereof of the public agency; may provide that any public agency shall have the right to continued use and/or priority use of the waterworks, water supply system or any part thereof of the district and the water supply made available thereby during the useful life thereof upon payment of reasonable charges therefor; may contain provisions to assure equitable treatment of persons or public agencies who contract with the district pursuant to this act; and may contain such other provisions and requirements as the parties thereto may determine to be appropriate or necessary. Such contracts may extend over any period of time, notwithstanding any provision of law to the contrary, and may extend beyond the life of the waterworks or water supply system or any part thereof or the term of the bonds sold with respect to such facilities or improvements thereto.

(2) The obligations of a public agency arising under the terms of any contract referred to in this act, whether or not payable solely from a pledge of revenues, shall not be included within the indebtedness limitations of the public agency for purposes of any constitutional or statutory limitation or provision. To the extent provided in such contract and to the extent such obligations of the public agency are payable solely from the revenues and other moneys derived by the public agency from the operation of its waterworks or water supply system or any part thereof, such obligations shall be treated as expenses of operating such systems.

(3) Contracts referred to in this section may also provide for payments in the form of contributions to defray the cost of any purpose set forth in the contracts and as advances for the waterworks or water supply system or any part thereof subject to repayment by the district. A public agency may make such contributions or advances from its general fund or surplus fund or from any moneys legally available therefor.

(4) Payments made or to be made to the district by a public agency or other person pursuant to a contract for the waterworks or water supply system or any part thereof and the use of the water made available thereby shall be determined by the method specified in such contract and shall not be subject to approval or review by the Mississippi Public Service Commission.

(5) Subject to the terms of a contract or contracts referred to in this act, the district is hereby authorized to do and perform any and all acts or things necessary, convenient or desirable to carry out the purposes of such contracts, including the fixing, charging, collecting, maintaining and revising of rates, fees and other charges for the services rendered and water supplied to any user of the waterworks or water supply system operated or maintained by the district, whether or not such systems are owned by the district.

(6) The district shall plan any construction of any such waterworks or water supply system, shall enter into such contracts and shall arrange such financing as to assure that the district shall receive in payment under such contracts revenues sufficient to defray all direct and indirect costs, whether administrative, operational or otherwise, of administering, operating and maintaining such waterworks and water supply system, to pay interest and principal (whether at maturity or upon sinking fund redemption) on bonds of the district issued pursuant to this act and to fund reserves for debt service, for operation and maintenance and for renewals and replacements, and to fulfill requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security agreement relating to the bonds of the district issued pursuant to this act. To that end, the district may not expend money, including taxes levied pursuant to Section 51-9-131, Mississippi Code of 1972, for construction, operation or maintenance of any waterworks or water supply system authorized, acquired, constructed or improved under this act in excess of the revenues received by the district pursuant to contracts authorized by this act or otherwise available from the operation of such waterworks or water supply system.

SOURCES: Laws, 1985, ch. 428, § 5, eff from and after passage (approved March 26, 1985).

ATTORNEY GENERAL OPINIONS

To the extent allowable consistent with a city's priority right as set out in a contract, the Pearl River Valley Water Supply District may obtain, use, sell and deliver potable water from the Ross Barnett Reservoir to entities other than the city subject to applicable state and federal law and regulations. Walker, Jan. 30, 2003, A.G. Op. #03-0055.

RESEARCH REFERENCES

Am Jur. 78 Am. Jur. 2d, Waterworks and Water Companies §§ 1, 2.

CJS. 94 C.J.S., Waters §§ 531-794.

§ 51-9-205. Issuance of bonds by district; sales price and other bond requirements.

(1) The district shall have the power and is hereby authorized, from time to time, to issue bonds without notice and without an election on the question of the issuance thereof in such principal amounts as the district may determine

to be necessary to provide sufficient funds for achieving the purposes of this act, including, without limiting the generality of the foregoing, to defray the cost of the acquisition, construction, improvement or extension of the waterworks or water supply system or any part thereof, whether or not such facilities are owned by the district, the payment of interest on bonds of the district issued pursuant to this act, establishment of reserves to secure such bonds and payment of the interest thereon, expenses incident to the issuance of such bonds and to the implementation of the district's waterworks, water supply system and all other expenditures of the district incident to or necessary or convenient to carry out the purposes of this act. The bonds authorized by this act shall never constitute nor give rise to a pecuniary liability of the district, or a charge against its general credit or taxing powers and shall not constitute general obligations of the state.

(2) Bonds of the district issued pursuant to this act shall be payable from and secured by a pledge of all or any part of the revenues under any contract entered into pursuant to this act and from all or any part of the revenues derived from the operation of the waterworks and water supply system or any part thereof, as may be determined by the district, subject only to any agreement with the registered owners of the bonds. Such bonds may be further secured by a trust indenture between the district and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state.

(3) Bonds of the district issued pursuant to this act shall be authorized by a resolution or resolutions of the district. Such bonds shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, carry such conversion privileges, have such rank or priority, be executed in such manner and by such officers, be payable from such sources in such medium of payment at such place or places within or without the state, provided that one (1) such place shall be within the state, be subject to such terms of redemption prior to maturity, all as may be provided by resolution or resolutions of the district; however, such bonds shall not bear a greater overall interest rate to maturity than that allowed in Section 75-17-103, Mississippi Code of 1972.

(4) Bonds of the district issued pursuant to this act may be sold at a price not less than ninety-seven percent (97%) of par value plus accrued interest, at public or private sale, at such times as may be determined by the district to be in the public interest, and the district may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof.

(5) Any pledge of earnings, revenues or other moneys made by the district shall be valid and binding from the time the pledge is made. The earnings, revenues or other moneys so pledged and thereafter received by the district shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the district irrespective of whether such parties have notice

thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the directors of the district nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) Whenever any bonds shall have been signed by the officer(s) designated by the resolution of the district to sign the bonds who were in office at the time of such signing but who may have ceased to be such officer(s) prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the manual or facsimile signatures of such officer(s) upon such bonds shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially executing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

SOURCES: Laws, 1985, ch. 428, § 8, eff from and after passage (provided March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-207. Issuance of refunding bonds.

The district may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the district deems to be in the public interest, without notice and without an election on the question of the issuance thereof. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the district in respect of the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable. Any such refunding may be effected, whether the obligations to be refunded shall have then matured or shall thereafter mature, either by the exchange of the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, or by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations proposed to be refunded thereby, and regardless of whether the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

SOURCES: Laws, 1985, ch. 428, § 9, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-209. Validation of bonds; notice.

All bonds (other than refunding bonds, interim notes and certificate of indebtedness) issued pursuant to this act shall be validated as now provided by law in Sections 31-13-1 through 31-13-11, Mississippi Code of 1972; provided, however, that notice of such validation proceedings shall be addressed to the taxpayers of any public agency (i) which has contracted with the district pursuant to this act and whose contracts and the payments to be made by the public agency thereunder constitute security for the bonds of the district proposed to be issued, or (ii) which is a member of the district. Such notice shall be published at least once in a newspaper or newspapers having a general circulation within the geographical boundaries of each of the public agencies to whose taxpayers the notice is addressed. Such validation proceedings shall be instituted in the First Judicial District of the Chancery Court of Hinds County. The validity of the bonds so validated and of the contracts and payments to be made by the public agencies thereunder constituting security for the bonds shall be forever conclusive against the district and the public agencies which are parties to said contracts; and the validity of said bonds and said contracts and the payment to be made thereunder shall never be called in question in any court in this state.

SOURCES: Laws, 1985, ch. 428, § 10, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-211. State not obligated with respect to bonds; limitations on obligation of district.

Bonds issued under the provisions of this act shall not be deemed to constitute, within the meaning of any constitutional or statutory limitation, a debt, liability or obligation of the state, nor shall such bonds constitute a pledge of the full faith and credit of the state or of the district, but shall be payable solely from the revenues or assets of the district pledged therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that the district shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor and that neither the full faith and credit nor the taxing power of the state or the district is pledged to the payment of the principal of or the interest on such bonds.

SOURCES: Laws, 1985, ch. 428, § 11, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-213. Powers of district in connection with issuance of bonds.

The district shall have power in connection with the issuance of its bonds to:

(a) Covenant as to the use of any or all of its property, real or personal.

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of the registered owners of the bonds.

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any water treatment, waterworks or water supply systems or any part thereof or any revenue-producing contract or contracts made by the district with any person to secure the payment of bonds, subject to such agreements with the registered owners of bonds as may then exist.

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, moneys, funds or property with respect to which the district may have any rights or interest.

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(h) Covenant as to the limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds.

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the registered owners of bonds may be amended or abrogated, the amount of bonds the registered owners of which must consent thereto and the manner in which such consent may be given.

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon and the use and disposition of insurance proceeds.

(*l*) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers and duties in trust as the district may determine.

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the district tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the district power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the Constitution of the state.

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions as any purchaser of the bonds of the district may reasonably require.

SOURCES: Laws, 1985, ch. 428, § 12, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-215. Appointment of trustee to represent bond owners; appointment of receiver.

The district may, in any authorizing resolution of the board of directors, trust indenture or other security instrument relating to its bonds, provide for the appointment of a trustee who shall have such powers as are provided therein to represent the registered owners of any issue of bonds in the enforcement or protection of their rights under any such resolution, trust indenture or security instrument. The district may also provide in such resolution, trust indenture or other security instrument that the trustee, or in the event that the trustee so appointed shall fail or decline to so protect and enforce such registered owners' rights then such percentage of registered owners as shall be set forth in, and subject to the provisions of, such resolution, trust indenture or other security interest, may petition the court of proper jurisdiction for the appointment of a receiver of the collection facilities or treatment facilities the revenues of which are pledged to the payment of the principal of and interest on the bonds of such registered owners. Such receiver may exercise any power as may be granted in any such resolution, trust indenture or security instrument to enter upon and take possession of, acquire, construct or reconstruct or operate and maintain such collection facilities or treatment facilities, fix, charge, collect, enforce and receive all revenues derived from such collection facilities or treatment facilities and perform the public duties and carry out the contracts and obligations of the district in the same manner as the district itself might do, all under the direction of such court.

SOURCES: Laws, 1985, ch. 428, § 13, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-217. Exemption of district from taxes and fees; bonds to be free from taxation; exceptions.

(1) The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for their well-being and prosperity and for the improvement of their social and economic conditions, and the district shall not be required to pay any tax or assessment on any property owned by the district under the provisions of this act or upon the income therefrom; nor shall the district be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf.

(2) Any bonds issued by the district under the provisions of this act, their transfer and the income therefrom shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

SOURCES: Laws, 1985, ch. 428, § 14, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental

Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality].”

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.
CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-219. Bonds to be legal investments and to be accepted by state officers and bodies.

All bonds issued under the provisions of this act shall be legal investments for trustees, other fiduciaries, savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi; and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities and other political subdivisions thereof for the purpose of securing the deposit of public funds.

SOURCES: Laws, 1985, ch. 428, § 15, eff from and after passage (approved March 26, 1985).

Editor’s Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

“SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality].”

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.
CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-221. Rights and powers of district to remain unchanged while bonds are outstanding and unpaid.

The state hereby covenants with the registered owners of any bonds of the district that so long as the bonds are outstanding and unpaid the state will not limit or alter the rights and powers of the district under this act to conduct the activities referred to herein in any way pertinent to the interests of the bondholders including, without limitation, the district’s right to charge and collect rates, fees and charges and to fulfill the terms of any covenants made with the registered owners of the bonds, or in any other way impair the rights and remedies of the registered owners of the bonds, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

SOURCES: Laws, 1985, ch. 428, § 16, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations § 99.

CJS. 11 C.J.S., Bonds §§ 7-37.

§ 51-9-225. Provisions of article to be cumulative of other statutes.

The provisions of this act are cumulative of other statutes now or hereafter enacted relating to the issuance of bonds; to waterworks or water supply systems; and to the design, construction, acquisition or approval of facilities for such purposes, and any public agency may exercise all presently held powers in the furtherance of this act.

SOURCES: Laws, 1985, ch. 428, § 17, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

§ 51-9-227. Severability of provisions.

If any clause, sentence, paragraph, section or part of the provisions of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof directly involved in the controversy in which such judgment shall have been rendered.

SOURCES: Laws, 1985, ch. 428, § 18, eff from and after passage (approved March 26, 1985).

Editor's Note — Laws of 1985, ch. 428, § 19, effective from and after March 26, 1985, provides as follows:

"SECTION 19. Nothing contained in this act shall be construed to authorize the district to impound, appropriate or divert water from the Pearl River in an amount greater than the amount heretofore or hereafter approved through issuance of a permit or license by the Department of Natural Resources [now Department of Environmental Quality] or the Board of Water Commissioners [now Mississippi Commission on Environmental Quality]."

CHAPTER 11

Pearl River Basin Development District

Sec.
51-11-1. Legislative determination and declaration of policy.
51-11-3. General authority to organize.
51-11-5. Board of directors.
51-11-7. Counties which may become members of district.
51-11-9. Creation of district.
51-11-11. Powers of district.
51-11-13. Additional powers of the district.
51-11-15. Construction contracts.
51-11-17. Park and recreation facilities.
51-11-19. Rules and regulations.
51-11-21. Board of directors to issue bonds.
51-11-23. Details of bonds.
51-11-25. Limitation on amount of bonds.
51-11-27. Validation of bonds.
51-11-29. Trust agreement.
51-11-31. Payments to district.
51-11-33. State tax used for development district fund.
51-11-35. Additional funds.
51-11-37. Preliminary expenses.
51-11-39. Depository for funds of district.
51-11-41. Agreements relative to federal highways.
51-11-43. Cooperation with other governmental agencies.
51-11-45. District and its bonds exempt from taxation.
51-11-47. Overflow of lands not to constitute waste.
51-11-49. Development district law to be controlling.
51-11-51. Savings clause.
51-11-52. Flood control projects.
51-11-53. Definitions.
51-11-55. Flood control district; creation; determination of need; referendum.
51-11-57. Board of directors; composition; oath; per diem; officers; indemnification; terms of office.
51-11-59. Powers and duties of district through board of directors.
51-11-61. Appropriation permits; hearings.
51-11-63. Bonds; issuance; security.
51-11-65. Bonds; declaration of intention to issue; publication requirements.
51-11-67. Bond elections; voting locations; ballots.
51-11-69. Election results; certification; time for issuance of bonds following favorable vote.
51-11-71. Authority for issuance of bonds; negotiable instruments; interest; maturity; security; public sale.
51-11-73. Funding; tax levy on property; collection and deposit of tax monies.
51-11-75. Validation of bonds; use of attorney; notice publication.
51-11-77. Bonds as legal and authorized investments of public funds.
51-11-79. Exemption of district from taxes or assessments on project.
51-11-81. Maximum loan period; renewals and extensions; sources of loans; repayment of advances.
51-11-83. Negotiation and contracting powers of board of directors.
51-11-85. Cooperation and coordination with political entities.
51-11-87. Withdrawal of county from district.

§ 51-11-1. Legislative determination and declaration of policy.

It is hereby declared, as a matter of legislative determination, that the soil of the state and the waterways and surface waters of the state are among its basic resources; that the soil and the overflow and surface waters of the state have not heretofore been conserved to realize their full beneficial use; that the utilization, development, conservation, and regulation of such soil and waters are necessary to insure an adequate flood control program and a sanitary water supply at all times, to promote the balanced economic development of the state, and to aid in conservation and development of the soils and forests of the state, irrigation of lands needing irrigation, navigation, and pollution abatement. It is further determined and declared that the preservation, conservation, storage, and regulation of the waters of the Pearl River and its tributaries and their overflow waters for domestic, commercial, municipal, industrial, agricultural, and manufacturing purposes, for recreational uses, for flood control, timber development, irrigation, navigation, and pollution abatement, and for the preservation, conservation, and development of the soil of the Pearl River Basin are, as a matter of public policy, for the general welfare of the entire people of the state.

It is hereby further declared, as a matter of legislative determination, that the creation of the Pearl River Basin Development District is determined to be necessary and essential to the accomplishment of the aforesaid purposes and that this chapter operates on a subject in which the state at large is interested.

SOURCES: Codes, 1942, § 5956-251; Laws, 1964, ch. 255, § 1, eff from and after passage (approved June 1, 1964).

Cross References — Creation of Pearl River Industrial Commission, see § 51-9-1. Pearl River Valley Water Supply District, see § 51-9-101 et seq.

§ 51-11-3. General authority to organize.

The Pearl River Basin Development District may hereafter be organized in this state under the provisions of this chapter in the manner hereinafter provided and, when so organized, the Pearl River Basin Development District shall be an agency of the state and a body politic and corporate.

SOURCES: Codes, 1942, § 5956-252; Laws, 1964, ch. 255, § 2, eff from and after passage (approved June 1, 1964).

Cross References — Provision that the Pearl River Basin Development District shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

§ 51-11-5. Board of directors.

(1) All powers of the Pearl River Basin Development District, hereinafter referred to in this chapter as the district, shall be exercised by a board of directors to be selected and composed as follows:

(a) The Mississippi Commission on Environmental Quality, the Mississippi Commission on Wildlife, Fisheries and Parks, the Forestry Commission, and the State Board of Health of the State of Mississippi shall each appoint one (1) director to serve on the board of directors of the district, each such director to serve at the pleasure of the respective state agency appointing him but not to exceed a six-year term.

(b) The board of supervisors of each county which elects to become a member of the district shall appoint two (2) directors from that county, each of whom shall serve for a term of six (6) years or until his successor is appointed by the board of supervisors of that county and qualified. In making its initial appointment of directors, the board of supervisors of each member county shall appoint one (1) of its two (2) directors to serve for a term of three (3) years or until his successor is appointed and qualified.

(c) In addition to the two (2) directors in paragraph (b), each county shall be entitled to additional representation on the board based on its annual contribution for the support of the district required under Section 51-11-31. If the annual contribution of a county as certified under Section 51-11-31 is more than One Hundred Thousand Dollars ($100,000.00), the county may appoint one (1) additional director for each increment of One Hundred Thousand Dollars ($100,000.00), to be contributed. Each additional director shall serve a term of six (6) years. If, in subsequent years, a county's contribution is reduced below One Hundred Thousand Dollars ($100,000.00), or a multiple thereof, a county's additional representation shall be reduced correspondingly. If a county's contribution representation is reduced, the board of supervisors of the county shall designate the director to be removed. No member county shall be entitled to more than three (3) additional directors under this paragraph.

(d) The Governor of the State of Mississippi shall appoint one (1) director residing within the district, who shall serve for a term of six (6) years or until his successor is appointed by the Governor and qualified.

(2) Each director shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(3) Each director shall receive a per diem in the amount as provided in Section 25-3-69 for attending each day's meeting of the board of directors and for each day spent in attending to the necessary business of the district and, in addition, he shall receive reimbursement for actual expenses, including travel expenses, as provided in Section 25-3-41.

(4) The board of directors shall annually elect from its number a president and vice president of the district and such other officers as, in the judgment of the board of directors, are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board of directors, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this chapter upon the president when the president is absent or fails or declines to act, except the

president's right to vote. The board of directors shall also appoint a secretary and a treasurer who shall be members of the board of directors, and it may combine those officers. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), with sureties qualified to do business in this state, and the premiums on said bonds shall be an expense of the district. Each such bond shall be payable to the State of Mississippi; the condition of each such bond shall be that the treasurer or director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the district.

(5) A majority of the total membership of the board of directors shall constitute a quorum at a regular meeting, or at any special meeting duly called and held for a specific purpose. All business of the district shall be transacted by the affirmative vote of a majority of the total membership of the board of directors.

(6) The State Auditor of Public Accounts shall annually audit the books and records of the district and make a report thereof to the Governor and the Legislature.

SOURCES: Codes, 1942, § 5956-253; Laws, 1964, ch. 255, § 3; Laws, 1981, ch. 402, § 2; Laws, 1984, ch. 426, § 1; Laws, 2000, ch. 516, § 92; Laws, 2004, ch. 403, § 1, eff from and after July 1, 2004.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 51-11-7. Counties which may become members of district.

Any county bordering on the Pearl River or any of its tributaries and any county through which the Pearl River or any of its tributaries runs may be included in the district. Each such county shall be considered a part of the Pearl River Basin. The counties within the Pearl River Basin and eligible to become members of the district are as follows: Attala, Copiah, Hancock, Hinds, Jefferson Davis, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Pearl River, Pike, Rankin, Scott, Simpson, Walthall, and Winston.

SOURCES: Codes, 1942, § 5956-254; Laws, 1964, 1st Ex. Sess., ch. 19; Laws, 1966, ch. 272, § 1; Laws, 1997, ch. 343, § 1, eff from and after passage (approved March 17, 1997).

§ 51-11-9. Creation of district.

(1) Within twenty (20) days after the passage of this chapter, the Mississippi Commission on Environmental Quality, the Mississippi Commission on Wildlife, Fisheries and Parks, the Forestry Commission, and the State Board of Health of the State of Mississippi shall appoint their respective members to the proposed district board of directors as provided in Section 51-11-5. These four (4) appointive members, upon taking the oath as provided, shall meet in

the Office of the Mississippi Department of Environmental Quality in Jackson, Mississippi, within ten (10) days, and adopt by a majority vote a resolution setting forth their intentions of creating the district and shall forthwith send a certified copy of said resolution to:

(a) The Governor;

(b) Executive officers of the Mississippi Commission on Environmental Quality, Mississippi Commission on Wildlife, Fisheries and Parks, Forestry Commission, and State Board of Health; and

(c) The president of the board of supervisors and the chancery clerk of each county which is part of the Pearl River Basin. After receipt of said resolution, each of the four (4) state agencies hereinabove named may adopt its own resolution favorable or unfavorable to the creation of said district; and the respective boards of supervisors may, at their next regular meeting or at any subsequent meeting, likewise adopt a resolution favorable or unfavorable to creating said district. All said resolutions adopted shall be certified by adopting body's secretary, clerk, or executive officer, and certified copies shall be filed with each state agency and political subdivision named in this section.

(2) The board of supervisors of any county which is part of the Pearl River Basin and which desires to become a member of the district shall, upon receipt of the certified resolution to be adopted by the four (4) initial directors, declare said board's intentions by adopting a resolution expressing its desire to have said district created and stating that its county desires to be a member thereof and that said board desires and intends to levy a special ad valorem tax not to exceed one-half (½) mill on all taxable property within said county for the use and benefit of the Pearl River Basin Development District, if and in the event that other funds of that county are not available and appropriated to pay for that county's required contribution to said district. The said resolution shall be published once each week for three (3) consecutive weeks in some newspaper published in the county and having a general circulation therein. If within twenty-one (21) days after the date of the first publication of said resolution no petition signed by twenty per cent (20%) of the qualified electors of the county is filed with the board of supervisors requesting the calling of an election on the question of the county's participation in the district and the levying of the special ad valorem tax not to exceed one-half (½) mill as aforesaid, then the board of supervisors may proceed to have the county made a member of said district and to levy the special ad valorem tax not to exceed one-half (½) mill if and when required; but if within twenty-one (21) days after the date of the first publication of said resolution a petition is filed, signed by at least twenty percent (20%) of the qualified electors of said county, requesting an election on the proposition of said county's becoming a member of the proposed district and the levying of the special ad valorem tax not to exceed one-half (½) mill as herein provided, then said election shall be held and conducted as now provided by law for such election. If such an election is held and a majority of those voting therein vote for the proposition, the board shall, by appropriate resolution, bring the county into the district and levy the special ad valorem

tax not to exceed one-half (½) mill as provided by this chapter, if required. If the majority of those voting in such election shall vote against the proposition, then the county shall not become a member of the district nor levy the one-half (½) mill tax, and no further election shall be so conducted until the lapse of two (2) years after the last election.

(3) Whenever an aggregate of six (6) counties shall have become members of the Pearl River Basin Development District in the manner provided in this section, the said district shall be created as an agency of the state and a body politic and corporate with all the powers granted to it by statute; at which time the Governor shall appoint the four (4) directors to be appointed by him.

(4) Any eligible county may become a member of the district subsequent to its creation, in the manner that the original counties became members. New member counties shall have the same power and authority and be entitled to equal consideration of the district's board of directors, not inconsistent with the purpose of this chapter.

SOURCES: Codes, 1942, § 5956-255; Laws, 1964, ch. 255, § 5; Laws, 2000, ch. 516, § 93, eff from and after passage (approved Apr. 30, 2000.)

§ 51-11-11. Powers of district.

The district, through its board of directors, is hereby empowered:

(a) To develop in conjunction with the U.S. Army Corps of Engineers, U.S. Secretary of Agriculture, U.S. Secretary of Interior, or with such other federal or state agency as may be involved, including agencies of the state of Louisiana, plans for public works of improvement for the preservation, conservation, development, storage, and regulation of soil and waters within the Pearl River Basin, including the impoundage, diversion, flowage, and distribution of waters for industrial, irrigational, or potable water supplies, the development of waters for navigation, and the prevention of floodwater damage; to enter into agreements with the United States of America, as represented by the U.S. Army Corps of Engineers or by such other federal agency as may be involved, to meet the requirements of local cooperation for flood control and navigation projects or other use of water as set out and authorized by public law of the United States, as now or hereafter amended.

(b) To sue and be sued in its corporate name.

(c) To adopt, use, and alter a corporate seal.

(d) To make bylaws for the management and regulation of its affairs.

(e) To make or cause to be made or to cooperate in making engineering surveys, feasibility studies, and cost-benefit estimates relating to the construction of dams, reservoirs, works, plants, or any other necessary related facilities for controlling, storing, using, and distributing, including to adjacent basins, the waters within the Pearl River Basin, or for the prevention of floodwater damage, for navigation therein, or for the use of its water resources for recreational purposes.

(f) To acquire by purchase, lease, gift, or in other manner, other than by condemnation, and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein within the boundaries of the district necessary for the purposes of the district.

(g) To make contracts and to execute instruments necessary to the exercise of the powers, rights, privileges, and functions conferred upon the district by this chapter.

(h) To apply for and accept grants or loans from the United States of America or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to such agencies for grants to construct, maintain, or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(i) To employ an executive vice president who shall act as general manager of the district and who may, at the discretion of the board of directors, have the power to employ and discharge employees. The board of directors shall have the right to employ engineers, attorneys, and all agents and employees necessary to the exercising of the powers, rights, privileges, and functions conferred upon the district by this chapter or any other law, or necessary to properly finance, construct, operate, and maintain the projects and plants of the district; and the district may pay reasonable compensation for such services. For all services in connection with the issuance of bonds, the attorney's fee shall be in accordance with the following:

1. On issues up to and including one hundred thousand dollars ($100,000.00), the attorney's fee shall not exceed one percent (1%) thereof.
2. On issues over one hundred thousand dollars ($100,000.00), and including three hundred thousand dollars ($300,000.00), the attorney's fee shall not exceed one-half percent (½%) thereof.
3. On issues over three hundred thousand dollars ($300,000.00), the attorney's fee shall not exceed one-fourth percent (¼%) thereof; but for any issue the attorney shall receive a minimum fee of two hundred fifty dollars ($250.00). For any other services, reasonable compensation shall be paid.

(j) To do any and all other acts or things necessary to the exercising of the powers, rights, privileges, or functions conferred upon the district by this chapter or any other law.

SOURCES: Codes, 1942, § 5956-257; Laws, 1964, ch. 255, § 7; Laws, 1968, ch. 264, § 2; Laws, 1984, ch. 426, § 2, eff from and after July 1, 1984.

Cross References — Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

Powers of district with regard to flood control projects in Pearl River Basin Development district, see § 51-11-52.

JUDICIAL DECISIONS

1. In general.

Corporate political subdivision of state is immune under doctrine of sovereign immunity from suit by swimmer injured as result of dive into shallow water; right of water supply district to "sue and be sued" does not constitute waiver of sovereign immunity; purchase of liability insurance does not constitute waiver of sovereign immunity. Dumas v. Pearl River Basin Dev. Dist., 621 F. Supp. 960 (S.D. Miss. 1985).

§ 51-11-13. Additional powers of the district.

The term "project" when used herein shall mean the general plans and purposes of the district, including without limitation physical properties and the location of reservoir or reservoirs, dam or dams, and related facilities, as approved by the district. The words "project area" shall mean any geographic area, as defined by a resolution of the board of directors of the district, located within (i) any county which is a member of the district or (ii) any portion of any other county which lies within the watershed area of the Pearl River and its tributaries. The district, through its board of directors, shall have, in addition to and without limitation upon the powers enumerated in Section 51-11-11, the following powers:

(a) To impound and appropriate for beneficial use overflow water and the surface water of the Pearl River or its tributaries within the project area at the place or places and in the manner and amount as may be approved by the Department of Environmental Quality, by the construction of a dam or dams, reservoir or reservoirs, work or works, plants, and any other necessary related facilities contemplated and described as a part of the project; to construct a dam or dams, reservoir or reservoirs, work or works, and any other necessary related facilities contemplated and described as a part of the project to control flooding on the Pearl River and its tributaries; to control, store, and preserve these waters and to use, distribute, and sell them; to construct or otherwise acquire within the project area all works, plants, or other facilities necessary to the project for the purpose of soil conservation or for the purpose of processing water and transporting it to cities and other facilities for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes; and to control open channels for delivery purposes and water transportation; provided, however, a decision by the board of directors to have a dam or reservoir constructed within a county may be vetoed by an affirmative vote of a majority of each of the boards of supervisors of any three (3) or more member counties of the district.

(b) To acquire and develop any other available water necessary to the project and to construct, acquire, and develop all facilities within the project area deemed necessary with respect thereto, including terminals.

(c) To forest and reforest, and to aid in the foresting and reforesting of, the project area and to prevent and aid in the prevention of soil erosion and flood within this area; to control, store, and preserve within the boundaries of the project area the waters of the Pearl River or any of its tributaries for irrigation of lands and for prevention of water pollution.

(d) To acquire by condemnation all property or interest in property of any kind, real, personal, or mixed, within the Pearl River Basin, whether within or without the project area, strictly and presently necessary for the projects and the exercise of the powers, rights, privileges, and functions conferred upon the district by this chapter, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone or telegraph companies and according to the provisions of Section 29-1-1. No petition to condemn any property or any interest in any property shall be filed unless accompanied by a certificate by the United States Army Corps of Engineers or other federal agency, or by a competent engineer or engineering firm, stating that the property being acquired is necessary for the purposes of an approved project of the district. For the purposes of this chapter, the right of eminent domain of the district within the project area shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power, and other companies or corporations and shall be sufficient to enable the acquisition and relocation of county roads, state highways, or other public property within the project area. The cost of right-of-way purchases, rerouting, and elevating all other county-maintained roads affected by constructions shall be borne by the district, and new construction shall be of equal quality as in roads existing as of January 1, 1984. The county in which this work is done may assist in these costs if the board of supervisors so desires.

The amount and character of interest in land, other property, and easements to be acquired shall be determined by the board of directors on the basis of the proven needs of the particular project or projects involved. The board of directors shall make this determination in compliance with the provisions of Section 29-1-1. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties; sand and gravel shall not be considered as minerals within the meaning of this section; however, where land is condemned for easement purposes only, the sand and gravel contained therein or thereunder shall not be condemned, except to the extent necessary for these easement purposes, but may be acquired in full by negotiation; and

(ii) No person or persons owning the drilling rights or the right to share in production or mining shall be prevented from exploring, developing, or producing oil or gas or sand and gravel with necessary rights-of-way for ingress and egress, pipelines, and other means of transporting these products by reason of the inclusion of the lands or mineral interests or sand and gravel within the project area, whether below or above the waterline, but these activities shall be under reasonable regulations by the board of directors as will adequately protect the project.

(e) To require the necessary relocation of roads, highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of such relocation. Further, the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of roads, highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities, and to convey them to the owners thereof in connection with relocation as a part of the construction of the project.

(f) To overflow and inundate any public lands and public property, including sixteenth section lands and lieu lands, within the project area.

(g) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate all facilities of any kind within the project area necessary to the project.

(h) To employ engineers, attorneys, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants, and to pay reasonable compensation for these services.

(i) To make contracts in the issuance of bonds as may be necessary to insure the marketability thereof.

(j) To enter into contracts with municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities, or commodities which the project may provide; to contract with any municipality, corporation or public agency for the rental, leasing, purchase, or operation of water production, water filtration or purification, water supply and distributing facilities of such upon consideration as the district and the entity may agree. Any contract may be upon any terms and for any time as the parties may agree, may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of these bonds, and all obligations are paid. Any contract with any political subdivision shall be binding upon the political subdivisions according to its terms, and the municipalities or other political subdivisions shall have the power to enter into these contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of the municipality or other political subdivision. The contracts may include within the discretion of the governing authorities a pledge of the full faith and credit of the political subdivisions for the performance thereof.

(k) To fix and collect charges and rates for any service, facilities, or commodities furnished by it in connection with the project and to impose penalties for failure to pay these charges and rates when due.

(*l*) To operate and maintain within the project area, with the consent of the governing body of any located within the district, any works, plants, or facilities deemed necessary to the accomplishment of the purposes for which the district is created.

(m) Subject to the provisions of this chapter, from time to time to lease, sell, or otherwise lawfully dispose of property of any kind, real, personal, or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this chapter, for the purpose of furthering the business of the district.

(n) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, the board shall advertise these lands for sale to the highest and best bidder for cash, and shall receive and publicly open the bids thereon.

(o) In the purchase of or in the entering into of all lease purchase agreements for supplies, equipment, heavy equipment, and the like, the directors shall in all instances comply with the provisions of law pertaining to public purchases by public bids on such supplies and equipment.

(p) In addition to, or in conjunction with, any other powers and duties of the district arising under this chapter, to exercise those powers, duties and functions of a joint water management district set forth in Sections 51-8-27 through 51-8-55, except the power of eminent domain under Section 51-8-33. Before exercising those powers and duties, the district must comply with the provisions of Sections 51-8-63 and 51-8-65. In exercising the functions of a joint water management district, the district may apply to the Environmental Quality Permit Board for delegation of those powers and duties as provided by Section 51-3-15, and to apply to the Mississippi Commission on Environmental Quality for delegation of those powers and duties provided by Section 51-3-21.

(q) To create a flood control district within the Pearl River Basin Development District as provided under Sections 51-11-53 through 51-11-85.

SOURCES: Codes, 1942, § 5956-258; Laws, 1964, ch. 255, § 8; Laws, 1984, ch. 426, § 3, eff from and after July 1, 1984; Laws, 1993, ch. 615, § 8; Laws, 1995, ch. 616, § 5, eff from and after July 1, 1995; Laws, 1998, ch. 515, § 18, eff from and after July 1, 1998.

Cross References — Requirement of a simple majority vote of the total membership of the board of directors for the transaction of district business except as provided in this section, see § 51-11-5.

JUDICIAL DECISIONS

1. In general.

Corporate political subdivision of state is immune under doctrine of sovereign immunity from suit by swimmer injured as result of dive into shallow water; right of water supply district to "sue and be sued" does not constitute waiver of sovereign immunity; purchase of liability insurance does not constitute waiver of sovereign immunity. Dumas v. Pearl River Basin Dev. Dist., 621 F. Supp. 960 (S.D. Miss. 1985).

ATTORNEY GENERAL OPINIONS

Upon withdrawal of member counties and municipalities of a development district in which are located recreational parks that were constructed with funding assistance from the federal government, if the board of directors of the district makes the factual finding that disposing of the properties by lease or sale to the interested municipalities and/or counties under circumstances which will ensure their continued operation as recreational facilities will further the business of the district, proceeding under Section 51-11-13(m) is clearly within the district's authority. Rayner, Nov. 15, 2002, A.G. Op. #02-0653.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-11-15. Construction contracts.

All construction contracts by the district, where the amount of the contract shall exceed two thousand five hundred dollars ($2,500.00), shall be made in accordance with the requirements imposed by law on state agencies with regard to such contracts.

SOURCES: Codes, 1942, § 5956-259; Laws, 1964, ch. 255, § 9; Laws, 1984, ch. 426, § 4, eff from and after July 1, 1984.

Cross References — Contracts in connection with flood control projects in Pearl River Basin Development district, see § 51-11-52.

§ 51-11-17. Park and recreation facilities.

The Pearl River Basin Development District is authorized and empowered to establish or otherwise provide for public parks and recreation facilities and for the preservation of fish and wildlife, and to acquire land otherwise than by condemnation for such purposes.

SOURCES: Codes, 1942, § 5956-260; Laws, 1964, ch. 255, § 10, eff from and after passage (approved June 1, 1964).

§ 51-11-19. Rules and regulations.

(1) The board of directors of the district shall have the power to adopt and promulgate all reasonable regulations so as to secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district, to prevent waste of water or the unauthorized use thereof, and to regulate residence, hunting, fishing, boating, camping, circulation of vehicular traffic on land, the parking of such vehicles, and all recreational and business privileges in, along, or around any such reservoir, any body of land, or any easement owned by the district.

(2) All such regulations prescribed by the board of directors, after publication in a daily newspaper of statewide circulation and in a newspaper of general circulation in each county comprising the area of the district, shall have the full force and effect of law, and violation thereof shall be punishable by fine, not to exceed One Thousand Dollars ($1,000.00), as may be prescribed in such regulations, or by imprisonment, not to exceed fifteen (15) days, to be determined by the court, or both.

(3) In the event of a violation of any regulation adopted to prevent pollution of the waters in any reservoir owned by the district, or the threat of continuous violation thereof, the district shall have authority to sue for and obtain damages and/or other appropriate relief, including injunctive relief.

(4) All such rules and regulations so prescribed and the penalties fixed thereunder, by the authority of this section, shall not conflict with, exceed, alter, or suspend any regulations, rules, or penalties prescribed by general statute, by the Mississippi Commission on Wildlife, Fisheries and Parks or the Mississippi State Board of Health. All fines and penalties levied and collected under this chapter shall be remitted and accounted for in accordance with the general statutes relating thereto.

SOURCES: Codes, 1942, § 5956-261; Laws, 1964, ch. 255, § 11; Laws, 2000, ch. 516, § 94, eff from and after passage (approved Apr. 30, 2000.)

§ 51-11-21. Board of directors to issue bonds.

The board of directors of the Pearl River Basin Development District is hereby authorized and empowered to borrow money or issue bonds of the district for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing, and maintaining the projects and works provided for in this chapter, and related facilities, including all financing and financial advisory charges, interest during construction, engineering, architectural, legal, and other expenses incidental to and necessary for the foregoing or for the carrying out of any power conferred by this chapter.

Said board of directors is authorized and empowered to borrow money and issue bonds at such times and in such amounts as shall be provided for by resolution of said board of directors, not to exceed the limitation prescribed in Section 51-11-25. All such bonds so issued by the district shall be secured solely by a pledge of the net revenues which may now or hereafter come to the district and by the pledge of the avails of the two (2) mills ad valorem tax provided for in Section 51-11-33. Such bonds shall not constitute general obligations of the state of Mississippi or of the counties comprising said district and shall not be secured by a pledge of the full faith, credit, and resources of this state or of said counties. Bonds of the district shall not be included in computing any present or future debt limit of any county in such district under any present or future law. "Revenues" as used in Sections 51-11-1 through 51-11-51 shall mean all charges, rentals, tolls, rents, gifts, grants, avails of tax levies, contributions, monies, and all other funds coming into the possession of the district by virtue of the provisions of this chapter, except the proceeds from the sale of bonds issued hereunder. "Net revenues" as used in Sections 51-11-1 through 51-11-51 shall mean the revenues after payment of costs and expenses of administration of the district and of operation and maintenance of the projects and related facilities.

SOURCES: Codes, 1942, § 5956-269; Laws, 1968, ch. 264, § 3; Laws, 1984, ch. 426, § 5, eff from and after July 1, 1984.

§ 51-11-23. Details of bonds.

All such bonds provided for by Section 51-11-21 are hereby declared to have all the qualities and incidents of negotiable instruments under the provisions of the Uniform Commercial Code, and in exercising the powers granted by this chapter the district shall not be required to and need not comply with the provisions of the Uniform Commercial Code. Such bonds may be issued at one time or from time to time, in such amount or amounts, shall bear such date or dates, shall be of such denomination or denominations, shall be payable at such place or places, shall bear interest at such rate or rates not exceeding six percent (6%) per annum, shall mature in such amount or amounts and at such time or times, not exceeding forty years from the date thereof, with or without option or prior payment, and shall be executed in such manner, all as may be determined by the board of directors of the Pearl River Basin Development District, as set out in the resolution or resolutions adopted by said board authorizing the issuance of said bonds. No interest payment due on any bond shall be evidenced by more than one coupon, and supplemental coupons will not be permitted; the difference between the highest rate of interest specified for any bond issue shall not exceed the lowest rate of interest specified for the same bond issue by more than one and one-fourth percent (1¼%). Each interest rate specified in any bid must be a multiple of one eighth of one percent (⅛ of 1%) or one tenth of one percent (⅒ of 1%), and a zero rate of interest cannot be named. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to pay such bond may be for a period not exceeding one year. Such bonds shall be signed by the president of the district, and the official seal of the district shall be affixed thereto, attested by the secretary of the district. The interest coupons to be attached to such bonds may be executed by the facsimile signatures of such officers. Whenever any such bonds shall have been signed by the officers herein designated to sign the bonds who were in office at the time of such signing but who may have ceased to be such officers prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officers upon such bonds and coupons shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser, or had been in office on the date such bonds may bear.

Such bonds may be called in, paid, and redeemed upon such terms and conditions as may be specified in the resolution authorizing the issuance of such bonds, on a date to be specified therein or on any interest payment date thereafter prior to maturity, upon not less than thirty days' notice to the paying agent or agents designated in such bonds, and at such premium as may be designated in such bonds. In no case shall any premium exceed six percent (6%) of the face value of such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the net revenues of such district, as defined in Section 51-11-21, and that they do not constitute general obligations of the State of Mississippi or of the counties comprising said district, and are not secured by a pledge of the full faith, credit, and resources of this state or of such counties.

All such bonds as provided for herein shall be sold on sealed bids at public sale as provided by Section 31-19-25, of the Mississippi Code of 1972. No such sale shall be at a price so low as to require the payment of interest on the money received therefor at more than six percent (6%) per annum computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This chapter shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

SOURCES: Codes, 1942, § 5956-270; Laws, 1968, ch. 264, § 4, eff from and after passage (approved July 18, 1968).

§ 51-11-25. Limitation on amount of bonds.

Bonds issued pursuant to Sections 51-11-1 through 51-11-51, shall not exceed twenty-five million dollars ($25,000,000.00) in the principal amount.

SOURCES: Codes, 1942, § 5956-271; Laws, 1968, ch. 264, § 5; Laws, 1984, ch. 426, § 6, eff from and after July 1, 1984.

§ 51-11-27. Validation of bonds.

All bonds issued pursuant to this chapter shall be validated as now provided by law in Sections 31-13-1 through 31-13-11, Mississippi Code of 1972. Such validation proceedings shall be instituted in the chancery court of the First Judicial District of Hinds County, Mississippi, where the principal office of the district is located, but notice of such validation proceedings shall be published at least two times in a newspaper of general circulation in and published in each of the counties comprising the Pearl River Basin Development District, the first publication of which in each case shall be made at least ten days preceding the date set for validation.

SOURCES: Codes, 1942, § 5956-272; Laws, 1968, ch. 264, § 6, eff from and after passage (approved July 18, 1968).

§ 51-11-29. Trust agreement.

At the discretion of the board of directors of the district, any bonds provided for in Section 51-11-21 may be further secured by a trust agreement between the board of directors and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law. The trust agreement may contain provisions for the issuance of additional bonds under the procedure set out in this chapter for any of the purposes authorized by this chapter, which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein. The trust agreement may include provisions to the effect that if there is any default in the payment of principal or interest on any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer the properties and facilities of the district, including authority to sell or make contracts for the sale of any services, facilities, or commodities of the district, or to renew such contracts, subject to the approval of the court appointing said receiver, and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of said bonds and interest thereon in accordance with the resolution of the board of directors authorizing the issuance of such bonds and said trust agreement. The fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee upon default in the payment of principal and interest on the bonds.

SOURCES: Codes, 1942, § 5956-273; Laws, 1968, ch. 264, § 7, eff from and after passage (approved July 18, 1968).

§ 51-11-31. Payments to district.

The board of supervisors of each county becoming a member of the district shall annually, on or before March 15 of each year beginning with the calendar year 1965, pay or cause to be paid to the depository of the district a sum equal to one-half (½) mill on all of the taxable property within the county, beginning with the tax assessment for the calendar year 1964, payable on or before March 15, 1965; and such payments shall be made and continued so long as there remains unpaid and outstanding any bonded indebtedness created by the board of directors of the district as herein provided, and so long thereafter as the district remains in existence and there is a present need therefor.

The board of supervisors of each county shall annually provide the district the aforesaid sum equal to one-half (½) mill on all taxable property within the county from the general fund of the county. However, no county shall be obligated or required to levy any tax or make any contribution under this section for the support of the district for any year unless and until the board of directors of the district shall have filed with the board of supervisors of any such county a detailed and itemized account of the income and expenditures of the district for and during the next preceding full fiscal year, which account shall be certified by the State Auditor of Public Accounts, and unless and until the board of directors of the district shall have filed with the board of supervisors of any such county a detailed budget of the district for the ensuing fiscal year. In any year in which the board of directors of the district shall certify to the board of supervisors of any such county that the budget of the district can be met by a sum less than one-half (½) mill on all taxable property within the county, then the county may appropriate such lesser sum from the general fund as certified by the board of directors of the district. The board of supervisors of any county which is a member of the Pearl River Basin Development District and which is also a member of the Big Black River Basin District shall pay or cause to be paid to the depository of the Pearl River Basin Development District a sum equal to one-half (½) mill on all of the taxable property within such county which lies within the watershed area of the Pearl River and its tributaries, such payments to be made, continued, levied, appropriated and deposited as provided in this paragraph.

SOURCES: Codes, 1942, § 5956-256; Laws, 1964, ch. 255, § 6; Laws, 1968, ch. 264, § 1; Laws, 1986, ch. 400, § 32, eff from and after October 1, 1986.

Editor's Note — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration see § 7-7-2.

ATTORNEY GENERAL OPINIONS

County which underpaid its statutorily required contribution to District's support for number of years is obligated to remit to District amount sufficient to cover delinquency; any underpayments continue to be legally due and owing. Stennis, Jan. 24, 1990, A.G. Op. #90-0034.

§ 51-11-33. State tax used for development district fund.

In each county of the State of Mississippi which is a member of the Pearl River Basin Development District, beginning with the ad valorem tax assessment for the year 1968, payable on or before February 1, 1969, and so long thereafter as there remains unpaid and outstanding any bonded indebtedness or other obligations of the district, the tax collector of each such county shall pay into the depository selected by the district for said purpose the amount of two mills of all ad valorem taxes due by said county to the State of Mississippi, which is collected by the tax collector of said county, or which may be collected by any other lawful taxing agency of said county or state, for said county; and the State of Mississippi shall continue to levy not less than two mills ad valorem taxes on each county in the district so long as any bonds or obligations issued pursuant to this chapter remain outstanding. In those counties which are members of the district and which on June 1, 1964, have already otherwise committed and are retaining the amount of two mills or some lesser amount of ad valorem taxes due by said county to the State of Mississippi for some other authorized purpose, the tax collector shall pay into the depository of the district under this section only the difference, if any, between the amount of two mills and the amount thus committed and retained for some other authorized purpose for so long as such other authorized purpose shall continue, and thereafter shall pay into the depository of the district the full two mills. The tax provided for support of the district in this section is in addition to the sum equal to one-half (½) mill provided for in Section 51-11-31.

SOURCES: Codes, 1942, § 5956-256; Laws, 1964, ch. 255, § 6; Laws, 1968, ch. 264, § 1, eff from and after passage (approved July 18, 1968).

§ 51-11-35. Additional funds.

To provide additional funds for the planning, undertaking, construction, completion, operation and maintenance of any work, construction, or project of special benefit to and situated wholly or partially within a county which is a member of the Pearl River Basin Development District, the board of supervisors of each such member county may, in addition to the appropriation provided for in Section 51-11-31 and in addition to the state ad valorem tax provided for in Section 51-11-33, set aside, appropriate and expend moneys from the general fund in addition to any tax or appropriation otherwise authorized by law, which shall be placed in a depository of the district designated for such purpose as a special fund, and shall be used by the district for no other purpose.

SOURCES: Codes, 1942, § 5956-256; Laws, 1964, ch. 255, § 6; Laws, 1968, ch. 264, § 1; Laws, 1986, ch. 400, § 33, eff from and after October 1, 1986.

§ 51-11-37. Preliminary expenses.

Any municipality or county which is within the territorial limits of the district may advance funds to the district to pay the preliminary expenses of the district, including engineers' reports, organization, or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provision of any law to the contrary, any such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing, for the purpose of making such advances. The board of directors of the district is hereby authorized to repay any such advances from the monies of any funds possessed by the district.

SOURCES: Codes, 1942, § 5956-256; Laws, 1964, ch. 255, § 6; Laws, 1968, ch. 264, § 1, eff from and after passage (approved July 18, 1968).

§ 51-11-39. Depository for funds of district.

(1) The board of directors shall designate one or more qualified state depositories within the district to serve as depositories for the funds of the district, and all funds of the district other than funds required by any trust agreement to be deposited, from time to time, with the trustee or any paying agent for outstanding bonds of the district shall be deposited in such depository or depositories. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

(2) Before designating a depository or depositories, the board of directors shall issue a notice stating the time and place the board will meet for such purpose and inviting the qualified state depositories in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. Such notice shall be published one (1) time in

a newspaper or newspapers published in the district and specified by the board.

(3) At the time mentioned in the notice, the board shall consider the applications and the management and conditions of the depositories which offer the most favorable terms and conditions for the handling of the funds of the district, and which the board finds have proper management and are in condition to warrant handling of district funds in the manner as provided under the chapter on depositories. Membership on the board of directors of an officer or director of a depository shall not disqualify such depository from being designated as a depository.

(4) If no applications acceptable to the board are received by the time stated in the notice, the board shall designate some qualified state depository or depositories within the district upon such terms and conditions as it may find advantageous to the district. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

SOURCES: Codes, 1942, § 5956-262; Laws, 1964, ch. 255, § 12; Laws, 1988, ch. 473, § 12, eff from and after December 1, 1988.

§ 51-11-41. Agreements relative to federal highways.

The board of directors of the Pearl River Basin Development District is hereby authorized and empowered to negotiate and contract with the United States of America or any agency thereof concerning all lands, easements, and rights of way necessary for the relocation of any federal road, highway, parkway, or the facilities appurtenant thereto.

SOURCES: Codes, 1942, § 5956-263; Laws, 1964, ch. 255, § 13, eff from and after passage (approved June 1, 1964).

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-11-43. Cooperation with other governmental agencies.

The district shall have authority to act jointly with counties, municipalities, districts, political subdivisions, public agencies, commissions and instrumentalities of this state or any other state, and with the federal government and agencies thereof in the performance of the purposes and services authorized in this chapter, and upon such terms as may be agreed upon by the parties to any such agreement. The board of directors of the district shall have authority to negotiate and contract with the Secretary of the Army, the U.S. Army Corps of Engineers or any other federal agency under the provisions of any applicable law or regulation of the United States Government. The several counties, municipalities, districts, political subdivisions, public agencies, commissions and instrumentalities of this state are authorized and empowered to enter into contracts and joint funding agreements with the district in the performance of the purposes and services authorized in this chapter and for the planning, construction, operation and maintenance of projects approved by the district, including but not limited to flood control projects, parks and recreational projects of the district.

SOURCES: Codes, 1942, § 5956-264; Laws, 1964, ch. 255, § 14; Laws, 1968, ch. 264, § 8; Laws, 1984, ch. 426, § 7, eff from and after July 1, 1984.

Cross References — Cooperation with other state and federal agencies in flood control projects in Pearl River Basin, see § 51-11-52.

§ 51-11-45. District and its bonds exempt from taxation.

The accomplishment of the purposes stated in this chapter being for the benefit of the people of this state and for the improvement of the properties and industries, the district in carrying out the purposes of this chapter will be performing an essential public function and shall not be required to pay any tax or assessment on the projects and related facilities or any part thereof; and the interest on the bonds issued hereunder shall at all times be free from taxation within this state. The state hereby covenants with the holders of any bonds to be issued hereunder that the Pearl River Basin Development District shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Codes, 1942, § 5956-265; Laws, 1964, ch. 255, § 15, eff from and after passage (approved June 1, 1964).

§ 51-11-47. Overflow of lands not to constitute waste.

It is hereby declared as a matter of legislative determination that the reasonable and necessary overflow and inundation of sixteenth section lands or lieu lands shall not constitute legal waste of such lands. The district shall pay a reasonable rental for the use of such lands to be overflowed, and the damages thereof shall be determined by the chancery court of the county in which the land is located. Any sixteenth section lands that have been flooded shall be reforested before this project shall ever be abandoned.

SOURCES: Codes, 1942, § 5956-266; Laws, 1964, ch. 255, § 16, eff from and after passage (approved June 1, 1964).

§ 51-11-49. Development district law to be controlling.

The provisions of any other law, general, special or local, except as provided in this chapter, shall not limit or restrict the powers granted by this chapter. The Pearl River Basin Development District shall not be subject to regulation or control by the public service commission.

SOURCES: Codes, 1942, § 5956-274; Laws, 1968, ch. 264, § 9, eff from and after passage (approved July 18, 1968).

§ 51-11-51. Savings clause.

Nothing in this chapter shall be construed to violate any provision of the federal or state constitutions, and all acts done under this chapter shall be done in such manner as will conform thereto, whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this chapter shall be invalid, such fact shall not affect the creation of the district or the validity of any other provision of this chapter.

SOURCES: Codes, 1942, § 5956-267; Laws, 1964, ch. 255, § 17, eff from and after passage (approved June 1, 1964).

§ 51-11-52. Flood control projects.

(1) The district, through its board of directors, is authorized and empowered to enter into agreements with counties, municipalities, corporations, districts, public agencies, political subdivisions of any kind and others, and such entities are authorized to enter into agreements with the district, which agreements may extend over any period of time, under which the district shall act as sponsor for a flood control project or projects, alone or in conjunction with the United States Army Corps of Engineers or any other federal agency or agencies, upon such consideration, terms and for such time as the district and such entities may agree.

(2) Any county, municipality, corporation, district, public agency or political subdivision of any kind is authorized and empowered upon such terms, with or without consideration, as it may determine: (a) to enter into agreements, which may extend over any period, with the district respecting action to be taken by such public body with respect to the planning, operation or maintenance of the flood control projects of the district pursuant to any of the powers granted by this section, including without limitation the appropriation or payment of funds or other assistance in connection with district projects; (b) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to the district; (c) to incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (d) to do any and all things necessary to aid or cooperate in the planning or carrying out of the flood control projects of the district; (e) to lend, grant or contribute funds to the district; (f) to cause public buildings and public facilities, including dams, parks, playgrounds, recreational, community, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; (g) to furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; (h) to plan or replan, zone or

rezone any part of the public body or make exceptions from building regulations; and (i) to cause administrative and other services to be furnished to the district. Any contract with any county, municipality or other public body entered into with the district pursuant to any of the powers granted by this chapter shall be binding upon said county, municipality or other public body according to its terms, and such county, municipality or other public body shall have the power to enter into such contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of such county, municipality or other public body. Such contracts may include within the discretion of such governing authorities a pledge of the full faith and credit of such public body for the performance thereof. If at any time title to or possession of any district project is held by any public body or governmental agency, other than the district, which is authorized by law to engage in the undertaking, carrying out, or administration of district projects, including any agency or instrumentality of the United States of America, the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency.

SOURCES: Laws, 1984, ch. 426, § 8, eff from and after July 1, 1984.

Cross References — Flood control agreements with United States, see § 51-35-1 et seq.

Urban flood control, see § 51-35-301 et seq.

§ 51-11-53. Definitions.

For purposes of Sections 51-11-53 through 51-11-85, the following words shall have the meanings ascribed in this section, unless the context clearly indicates otherwise:

(a) "District" means any flood control district created under Sections 51-11-53 through 51-11-85.

(b) "Necessary improvements, property or facilities" mean any improvement, property or facility for a project which is required by the project plan or which may increase the financial or economic viability of a project.

(c) "Project" means a general plan for and purposes of the flood and drainage control improvements.

(d) "Project area" means the physical location of any levees, channels, drains, or related facilities, the area which is necessary to be included in the district, and the area of the district as shown on the maps or plats provided under Section 51-11-55.

(e) "Related facilities" mean any facilities which are correlated with or used in connection with the project.

SOURCES: Laws, 1998, ch. 515, § 1; Laws, 2001, ch. 577, § 1, eff from and after Apr. 7, 2001.

Cross References — Power of Pearl River Basin Development District to create a flood control district, see § 51-11-13.

§ 51-11-55. Flood control district; creation; determination of need; referendum.

(1) The board of directors of the Pearl River Basin Development District, by resolution duly entered on its minutes, may create a flood control district from one or more counties or municipalities, or both, lying wholly within the Pearl River Basin Development District.

(2) Before creating a flood control district, the board of directors of the Pearl River Basin Development District shall adopt a resolution making a determination that there is a need for the creation of a flood control district. This resolution shall specify at a minimum the following:

(a) The proposed name of the district and the proposed areas to be included in the district, including a description of all proposed areas to be benefited by or protected from overflow or flood waters by any contemplated flood or drainage control improvements and any other areas which are necessary to be included in the district;

(b) Information available from any reports or studies regarding the engineering feasibility of constructing flood or drainage control improvements and related facilities along any river or its tributaries to benefit the district or protect proposed areas within the district from overflow or flood waters;

(c) The necessity and desirability for the construction of those improvements or facilities; and

(d) A general description of the purposes of any contemplated improvements of facilities, a general description of a plan including the proposed areas to be protected by the flood or drainage control improvements or related facilities or otherwise affected by those improvements or facilities, and maps or plats showing the general location of any contemplated flood and drainage control improvements and related facilities.

(3) Any revision or modification to a plan for flood or drainage control improvements or related facilities developed under Sections 51-11-53 through 51-11-85 shall be subject to approval by the Board of Directors of the Pearl River Basin Development District.

(4) After the board of directors of the Pearl River Basin Development District has adopted the resolution making the determination of need for the flood control district, the board of directors within ninety (90) days after adoption of that resolution shall hold a referendum within the proposed district and cause due notice of that referendum to be given. In the referendum, all qualified electors residing in the proposed flood district may vote. The ballots used in the referendum shall have printed on the ballot a brief statement of specifying the name, proposed areas included in the proposed flood control district and purpose of the proposed flood control district and the words "FOR CREATION OF THE FLOOD CONTROL DISTRICT" and "AGAINST CREATION OF THE FLOOD CONTROL DISTRICT." Each voter shall vote by placing a cross (X) opposite the voter's choice on the proposition.

(5) The board of directors of the Pearl River Basin Development District shall publish the results of the referendum held under this section. If a

majority of the qualified electors of the proposed flood control district who vote in the referendum vote for the creation of the flood control district, then the board of directors of the Pearl River Basin Development District shall adopt a resolution creating the flood control district as provided in Sections 51-11-53 through 51-11-85; otherwise, the board shall not adopt a resolution creating the flood control district.

SOURCES: Laws, 1998, ch. 515, § 2, eff from and after July 1, 1998.

§ 51-11-57. Board of directors; composition; oath; per diem; officers; indemnification; terms of office.

(1) All powers of a flood control district shall be exercised by a board of directors, to be composed of the following:

(a) If the flood control district is comprised of lands lying partly in a municipality and partly outside the limits of a municipality but wholly in one (1) county, the governing authority of the municipality shall appoint two (2) directors, the board of supervisors of the county in which the municipality lies shall appoint two (2) directors and the board of directors of the Pearl River Basin Development District shall appoint one (1) director.

(b) If the flood control district is comprised of lands lying, in whole or in part, in one or more municipalities which are in existence at the time of the creation of that district, and in one or more counties and not falling within the description of (a) of this subsection, the governing authority of each municipality shall appoint two (2) directors, the board of supervisors of each county in which part of the lands of the flood control district lie shall appoint two (2) directors and the board of directors of the Pearl River Basin Development District shall appoint one (1) director. If new municipalities are incorporated within the flood control district after the organization of that district, the governing authority of each new municipality shall appoint two (2) directors of the flood control district.

Each director appointed under this section, except the director appointed by the board of directors of the Pearl River Basin Development District, shall be either a resident or property owner in the district for which the director is appointed.

(2) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk, that the director will faithfully discharge the duties of the office. The oath shall be filed with the chancery clerk.

(3) Each director shall receive a per diem as provided under Section 25-3-69 for attending each meeting of the board and for each day actually spent in attending to the necessary business of the flood control district and shall receive reimbursement for actual expenses, including travel expenses, as provided in Section 25-3-41 upon express authorization of the board.

(4) The board of directors shall elect annually from its number a president and a vice president of the flood control district and any other officers deemed necessary. The president shall be the chief executive officer of the flood control

district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all the duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board also shall appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00), as set by the board of directors, and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00). The premiums on the bonds shall be an expense of the district. The condition of each bond shall be that the treasurer or director will faithfully perform all duties of office and account for all money which shall come into the treasurer's or director's custody.

(5) The initial terms of the members of the board of directors of the flood control district shall be: one-third (⅓) of the members shall serve for one (1) year, one-third (⅓) of the members shall serve for two (2) years, and one-third (⅓) of the members shall serve for three (3) years. At the initial meeting of the board of directors, the members shall determine by lot which of their members shall serve for only one (1), two (2), and three (3) years. After the initial term, each member shall hold office for a term of six (6) years or until a successor is appointed and qualified.

SOURCES: Laws, 1998, ch. 515, § 3; Laws, 2001, ch. 577, § 2, eff from and after Apr. 7, 2001.

§ 51-11-59. Powers and duties of district through board of directors.

Each flood control district, through its board of directors, may:

(a) Impound, divert, change, alter, or otherwise control overflow water and the surface water of any river or its tributaries within the project area within its district in accordance with the approved plan at any place or places and in any amount as approved by Permit Board, by the diversion of rivers or their tributaries, by the construction of a dam or dams, a levee or levees, a channel or channels, reservoir or reservoirs, works, pumps, plants, and any other necessary or useful related facilities contemplated or described as a part of the project within the district. The district also may construct or otherwise acquire within the project area all works, plants, or other facilities necessary or useful to the project for carrying out Sections 51-11-53 through 51-11-85.

(b) Cooperate with the United States of America in the construction of flood and drainage control improvements, for the protection of property, controlling floods, reclaiming overflow lands, and preventing overflows in this state; and for the purpose of operating and maintaining dams, reservoirs, channels, levees, pumps, and other flood control works and improvements which may be constructed by the United States of America or any department or agency of the United States of America.

(c) Furnish, without cost to the United States of America, all lands, easements, and rights-of-way necessary for the construction of the project or any part thereof, if the project or any part of the project is to be constructed by the United States of America or any agency or department of the United States of America; hold and save the United States free from damages due to the construction; make, without cost to the United States, any changes, alterations, or relocation of any public utilities, roads, highways, bridges, buildings, or local betterment made necessary by the work; provide assurances to the United States of America that encroachment on the levees, improved channels, and pond areas will not be permitted; maintain and operate the improvements after completion thereof in accordance with regulations prescribed by the United States of America or any agency or department of the United States of America; contribute in cash to the United States of America, or any agency or department of the United States of America, any sums of money as shall be required by the United States of America, or any agency or department of the United States of America, as a condition for the construction of any improvements by the United States or any agency or department; and generally, without being limited by any of the above, carry out and faithfully perform any obligations required of the district as a condition to the construction of any flood control work, project, or improvements by the United States of America, or any agency or department, and to give assurances to the United States of America that the district will so do.

(d) Construct, acquire, and develop all facilities within the project area in accordance with the approved plan deemed necessary or useful.

(e) Prevent or aid in the prevention of damage to person or property from the waters of any river or any of its tributaries.

(f) Acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest in property within the project area within the district, necessary for the project and convenient to the exercise of the powers, rights, privileges, and functions conferred upon the district by Sections 51-11-53 through 51-11-85.

(g) Acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest in property within the project area within the district, necessary for the project and the exercise of the powers, rights, privileges, and functions conferred upon the district by Sections 51-11-53 through 51-11-85, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone, or telegraph companies. For the purposes of Sections 51-11-53 through 51-11-85, the right of eminent domain of the flood control district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power, and other companies or corporations, and shall be sufficient to enable the acquisition of county roads, state highways, or other public property in the project area, and the acquisition, or relocation, of the utility property in the project area.

The amount and character of interest in land, other property, and easements to be acquired shall be determined by the board of directors. Their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of the board in making that determination. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area, sand, dirt and gravel not being considered as minerals within the meaning of this section, provided, the district shall pay to the property owner fair market commercial value for any sand, dirt or gravel acquired, regardless of whether the property owner has been commercially selling any sand, dirt or gravel before the date of acquisition; and

(ii) No person or persons owning the mining rights, drilling rights, or the right to share in production shall be prevented from exploring, developing, or producing sand, gravel, oil, or gas with necessary rights-of-way for ingress, egress, pipe lines, and other means of transporting those products by reason of the inclusion of any lands or mineral interests within the project area, whether below or above the water line, but any activities shall be under reasonable regulations adopted by the board of directors to adequately protect the project; and

(iii) In drilling and developing, those persons are vested with a special right to have any mineral interest integrated and their lands developed in a drilling unit or units as the State Oil and Gas Board shall establish after due consideration of the rights of all of the owners to be included in the drilling unit.

(h) Require the necessary relocation of bridges, roads, and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipe lines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners of the infrastructure, utilities or facilities or agreement is had with the owners regarding the payment of the cost of the relocation. The district may also acquire easements or rights-of-way in or outside of the project area for the relocation of any road, highway, railroad, telephone, and telegraph lines and properties, electrical power lines, gas pipe lines and mains and facilities, and convey the easements or rights-of-way to the owners in connection with the relocation as a part of the construction of the project.

(i) Overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(j) Construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and use and operate any facilities within the project area necessary or convenient to the project and to the exercise of the powers, rights, privileges, and functions.

(k) Sue and be sued in its corporate name.

(*l*) Adopt, use, and alter a corporate seal.

(m) Adopt bylaws for the management and regulation of its affairs.

(n) Employ engineers, attorneys, fiscal agents, advisors, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the facilities of the district and carry out Sections 51-11-53 through 51-11-85, and pay reasonable compensation for those services.

(o) Contract and execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by Sections 51-11-53 through 51-11-85.

(p) Conduct or cause to be conducted surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(q) Apply for and accept grants from the United States of America, or any corporation or agency created or designated by the United States of America, and ratify and accept applications made by voluntary associations to those agencies for grants to construct, maintain, or operate any project or projects which may be undertaken or contemplated by the district.

(r) Perform any other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by Sections 51-11-53 through 51-11-85 or any other law.

(s) Contract for the issuance of bonds as may be necessary to insure the marketability of those bonds.

(t) Operate and maintain within the project area, with the consent of the governing body of any municipality, town or county located within the district, any works, plants, or facilities of that municipality, town, or county deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of Sections 51-11-53 through 51-11-85, from time to time to lease, sell, or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest in property within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) Make any changes in location of levees, channels, drains, or related facilities, or other changes, alterations, or modifications in the plan filed with the petition creating the district, which may be necessary for the accomplishment of the general purposes of the district.

SOURCES: Laws, 1998, ch. 515, § 4; Laws, 2001, ch. 577, § 3, eff from and after Apr. 7, 2001.

§ 51-11-61. Appropriation permits; hearings.

The district may obtain through appropriate hearings an appropriation permit or permits from the Permit Board, as provided in Section 51-3-31.

SOURCES: Laws, 1998, ch. 515, § 5, eff from and after July 1, 1998.

§ 51-11-63. Bonds; issuance; security.

The board of directors of the district may issue bonds of the district to pay the costs of creating the district, acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified in Sections 51-11-53 through 51-11-85, including related charges, interest during construction, engineering, legal, and other expenses incidental to and necessary for the foregoing, or for the carrying out of any power conferred by Sections 51-11-53 through 51-11-85. Before issuing any bonds for acquiring, owning, constructing, operating, repairing and maintaining any project or works under Sections 51-11-53 through 51-11-85, the board of directors of a flood control district shall obtain to the extent practicable funds from other sources for the project or works. The board of directors may issue the bonds at any time and in any amount provided for by resolution of the board of directors. After the issuance and sale of the amount of bonds first voted in the district under Sections 51-11-53 through 51-11-85, no additional bonds shall be voted, issued, or sold under this article up to an amount which, when added to the amount of outstanding bonds, will exceed twenty percent (20%) of the assessed value of all taxable property within the district, according to the then last completed state and county assessment for taxation. All bonds so issued by the district shall be secured solely by the pledge of the avails of the ad valorem tax levy provided for in Sections 51-11-53 through 51-11-85. The bonds shall not constitute general obligations of the State of Mississippi or of the counties or municipalities comprising the district. The bonds shall not be secured by a pledge of the full faith, credit, and resources of the state or of any counties or municipalities. Bonds of the district shall not be included in computing any present or future debt limit of any county or municipality in the district under any present or future law.

SOURCES: Laws, 1998, ch. 515, § 6, eff from and after July 1, 1998.

§ 51-11-65. Bonds; declaration of intention to issue; publication requirements.

Before issuing bonds for any of the purposes authorized in Sections 51-11-53 through 51-11-85, the board of directors of the district shall declare its intention to issue the bonds by resolution spread upon its minutes, fixing in the resolution the maximum amount of bonds, the purpose for which they are to be issued, the date upon which an election shall be held in the district, and the place or places at which the election shall be held. A certified copy of the resolution shall be furnished to the county election commissioners of each county having lands lying in the district, and the county election commissioners shall conduct such elections. Notice of the election shall be signed by the secretary of the board of directors of the district and shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in each county in which any part of the district lies, and in each municipality lying within the district. The first publication of the notice shall be made not less than twenty-one (21) days before the date fixed for that election, and the last publication shall be made not more than seven (7) days before that date. If no newspaper is published in any municipality, then the notice shall be given by publishing the notice for the required time in some newspaper having a general circulation in the municipality and published in the same or an adjoining county and, in addition, by posting a copy of the notice for at least twenty-one (21) days before the election in at least three (3) public places in the municipality.

SOURCES: Laws, 1998, ch. 515, § 7, eff from and after July 1, 1998.

§ 51-11-67. Bond elections; voting locations; ballots.

The elections shall be held, as practicable, in the same manner as elections are held in county bond elections. In conducting the elections, the flood control district shall be divided into election precincts in accordance with existing election precincts created under Section 23-15-281. There shall be one (1) voting place in each election precinct. The election commissioners shall furnish at each voting place a list of the qualified electors residing in the flood control district who are also qualified electors in the election district. In the election, all qualified electors residing in the flood control district may vote. The ballots used at the election shall have printed on the ballot a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE." Each voter shall vote by placing a cross (X) opposite the voter's choice on the proposition.

SOURCES: Laws, 1998, ch. 515, § 8; Laws, 2001, ch. 577, § 4, eff from and after March 6, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — On March 6, 2002, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2001, ch. 577.

§ 51-11-69. Election results; certification; time for issuance of bonds following favorable vote.

When the results of the election on the question of the issuance of the bonds is canvassed by the county election commissioners and certified by them to the board of directors of the district, the board of directors shall determine and adjudicate whether or not three-fifths (3⁄5) of the qualified electors who voted in the election voted in favor of the issuance of the bonds. Unless three-fifths (3⁄5) of the qualified electors who voted in the election voted in favor of the issuance of the bonds, the bonds shall not be issued. If three-fifths (3⁄5) of the qualified electors who vote in the election vote in favor of the issuance of the bonds, the board of directors may issue the bonds, either in whole or in part, within five (5) years from the date of the election or within five (5) years after the final favorable termination of any litigation affecting the issuance of the bonds, as the board of directors deems best.

SOURCES: Laws, 1998, ch. 515, § 9, eff from and after July 1, 1998.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the section by substituting "If three-fifths (3/5) of the qualified electors" for "If a three-fifth (3/5) of the qualified electors." The Joint Committee ratified the correction at its August 5, 2016, meeting.

§ 51-11-71. Authority for issuance of bonds; negotiable instruments; interest; maturity; security; public sale.

All bonds authorized by Sections 51-11-53 through 51-11-85 shall be negotiable instruments within the meaning of the Uniform Commercial Code, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, shall be payable to bearer, and the interest to accrue on the bond shall be evidenced by proper coupons to be attached. The bonds bear interest at any rate or rates, but shall not bear a greater overall maximum interest rate to maturity than thirteen percent (13%) per year. The bonds shall mature annually in the amounts and at the times as shall be provided by the resolution of the board of directors. However, no bond shall have a longer maturity than forty (40) years from the date of issuance. The denomination, form, and place or places of payment of the bonds shall be fixed in the resolution of the board of directors of the district. The bonds shall be signed by the president and the secretary of the board of directors of the flood control district with the seal of the district affixed to the bonds. The coupons may bear only the facsimile signatures of the president and secretary. All interest accruing on the bonds shall be payable semiannually, except that the first interest coupon attached to any bond may be for any period not exceeding one (1) year.

If specified in the resolution directing the issuance of the bonds, the bonds may be called in, paid, or redeemed in inverse numerical order before maturity, upon not less than thirty (30) days' notice to the paying agent or agents designated in the bonds, and at any premium as may be designated in the bonds. However, in no case shall any premiums exceed the maximum interest rate allowed on the bonds.

All bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the ad valorem tax levy provided in Sections 51-11-53 through 51-11-85, they do not constitute general obligations of the State of Mississippi or of the counties or municipalities comprising the district, and they are not secured by a pledge of the full faith, credit and resources of the state or of the counties or municipalities.

All bonds authorized under Sections 51-11-53 through 51-11-85 shall be sold at public sale as provided by law. Except as otherwise provided in this section, no sale shall be at a price so low as to require the payment of interest on the money received therefor at more than the maximum interest rate allowed on the bonds computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond value, excluding from the computation the amount of any premium to be paid on redemption of any bonds before maturity.

Sections 51-11-53 through 51-11-85 shall be complete authority for the issuance of the bonds provided for in Sections 51-11-53 through 51-11-85 and no restriction or limitation otherwise prescribed by law shall apply.

SOURCES: Laws, 1998, ch. 515, § 10, eff from and after July 1, 1998.

§ 51-11-73. Funding; tax levy on property; collection and deposit of tax monies.

To provide funds for the payment of the principal of, interest on, and other charges in connection with bonds issued under Sections 51-11-53 through 51-11-85, to provide funds for the annual expenses of operations of the district, and to provide funds for carrying out the purposes of Sections 51-11-53 through 51-11-85, the district may levy annually a special tax upon all the taxable property within the flood control district on or before the first Monday of September of each year. The board of directors of the flood control district shall certify the levy to the boards of supervisors of the various counties in the district. The boards of supervisors of each county shall make the levy on each tract of land or other property in the flood control district according to the assessed valuation of that land or property or, in the discretion of the board of directors of the district, according to the incremental flood protection or benefits received for that land or property. The taxes shall be collected by the tax collectors of the respective counties in the district, who shall deposit the collected taxes in the depository selected by the board of directors of the district. The tax collector shall receive a sum not greater than one-fifth of one percent (⅕ of 1%) of the amount collected for services in making the collection, and that fee shall be paid into the county general fund. The board of directors of the flood control district shall levy a tax sufficient to pay the bonds and the interest on the bonds as the bonds and interest become due, to pay for the annual expense of operation of the district, and to provide funds for carrying out Sections 51-11-53 through 51-11-85.

SOURCES: Laws, 1998, ch. 515, § 11; Laws, 2001, ch. 577, § 5, eff from and after Apr. 7, 2001.

§ 51-11-75. Validation of bonds; use of attorney; notice publication.

All bonds issued under Sections 51-11-53 through 51-11-85 shall be validated as provided in Sections 31-13-1 through 31-13-11. The services of the state's bond attorney may be employed in the preparation of any bond resolutions, forms, or proceedings as may be necessary, for which the state's bond attorney shall be paid a reasonable fee. The validation proceedings shall be instituted in the chancery court of the county having jurisdiction of the district, but notice of that validation proceedings shall be published at least two (2) times in a newspaper of general circulation and published in each of the counties comprising the district. The first publication of the notice in each case shall be made at least ten (10) days before the date set for the validation.

SOURCES: Laws, 1998, ch. 515, § 12, eff from and after July 1, 1998.

§ 51-11-77. Bonds as legal and authorized investments of public funds.

All bonds of the district are declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, and for funds of the Mississippi Public Employees' Retirement System. The bonds are eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi. The bonds are lawful and sufficient security for the deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

SOURCES: Laws, 1998, ch. 515, § 13, eff from and after July 1, 1998.

§ 51-11-79. Exemption of district from taxes or assessments on project.

The accomplishment of the purposes of Sections 51-11-53 through 51-11-85 are for the benefit of the people of this state and for the improvement of their properties and industries, therefore the district, in carrying out the purposes of Sections 51-11-53 through 51-11-85, will be performing an essential public function and shall not be required to pay any tax or assessment on the project and related facilities or any part of the project or related facilities. The interest on the bonds issued under Sections 51-11-53 through 51-11-85 shall at all times be free from any taxation within this state. The state covenants with the holders of any bonds to be issued under Sections 51-11-53 through 51-11-85 that the district shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Laws, 1998, ch. 515, § 14, eff from and after July 1, 1998.

§ 51-11-81. Maximum loan period; renewals and extensions; sources of loans; repayment of advances.

The district may borrow funds for a period of not to exceed three (3) years and may renew and extend any loans from time to time, from any city, municipality, county, state, the United States of America, or any of its agencies or departments, or from any other source to pay the preliminary expenses of organizing the district or for carrying out any of the purposes of Sections 51-11-53 through 51-11-85, including engineering services, attorneys fees and expenses, and other organization and administration expenses, on any terms of repayment as the board of directors shall determine. Any municipality or county in which any part of the district shall lie may advance or loan funds to the district for the purposes. Any such municipality or county making a loan or advance may borrow money for a period not to exceed three (3) years from the date of borrowing for the purpose of making a loan or advance. The board of directors may repay any advances from the proceeds of any bonds issued under Sections 51-11-53 through 51-11-85. If any loan or advance is not paid at maturity of the bonds, the district may levy a tax on the lands of the district under Sections 51-11-53 through 51-11-85 for the repayment of the loan or advance.

SOURCES: Laws, 1998, ch. 515, § 15, eff from and after July 1, 1998.

§ 51-11-83. Negotiation and contracting powers of board of directors.

The board of directors of the district may negotiate and contract with the United States of America, the State of Mississippi, or any political subdivision of the state concerning the location, relocation, alteration, construction, changing, or closing of any highway, street, bridge, or roadway, or for the facilities appurtenant thereto, and all lands, easements, and rights-of-way necessary.

SOURCES: Laws, 1998, ch. 515, § 16, eff from and after July 1, 1998.

§ 51-11-85. Cooperation and coordination with political entities.

The district shall cooperate and coordinate to the maximum extent practicable with political subdivisions of the state, its agencies, and commissions and instrumentalities of the state, with other states, with municipalities, with the United States of America, and agencies, departments, and instrumentalities of the United States of America, in the performance of the purposes and services authorized in Sections 51-11-53 through 51-11-85, upon any terms as may be agreed upon by the directors.

SOURCES: Laws, 1998, ch. 515, § 17, eff from and after July 1, 1998.

§ 51-11-87. Withdrawal of county from district.

(1) From and after July 1, 2001, the board of supervisors of any county that is included in the Pearl River Basin Development District may elect to withdraw such county from the district by notifying the district in writing of its

intention on or before March 15 of the fiscal year of the district preceding the effective year of withdrawal from the district. The withdrawing county shall be responsible for paying its portion of any district bonds, contractual obligations, and any other indebtedness and liabilities of the district that are outstanding on the date of such county's withdrawal from the district, as well as the withdrawing county's portion of budgeted expenditures of the current fiscal year of the district. The withdrawing county's portion of such liabilities, obligations and indebtedness shall be determined through an independent audit conducted by a certified public accountant selected by the district. The board of supervisors of the withdrawing county shall provide the sum that is required by this section either by appropriation from any available funds of the county or by levy. Such board of supervisors may borrow funds as needed to satisfy the withdrawing county's portion of the liabilities, obligations and indebtedness of the district as required herein.

(2) Upon withdrawal of any such county, the district, in its sole discretion, may elect to continue to own and provide for the operation of any facility located in such withdrawing county, or it may elect to cease operation of the facility or sell the facility as provided for in this chapter.

SOURCES: Laws, 2001, ch. 577, § 6, eff from and after Apr. 7, 2001.

ATTORNEY GENERAL OPINIONS

Upon withdrawal of member counties and municipalities of a development district in which are located recreational parks that were constructed with funding assistance from the federal government, if the board of directors of the district makes the factual finding that disposing of the properties by lease or sale to the interested municipalities and/or counties under circumstances which will ensure their continued operation as recreational facilities will further the business of the district, proceeding under Section 51-11-13(m) is clearly within the district's authority. Rayner, Nov. 15, 2002, A.G. Op. #02-0653.

A county may rescind its withdrawal notice from the Pearl River Basin Development District after March 15th of the year in which notice was given but before the beginning of the fiscal year in which it intended to withdraw. Williams, Mar. 14, 2003, A.G. Op. #03-0076.

CHAPTER 13

Tombigbee Valley Authority and Water Management District

Article 1. Tombigbee Valley Authority 51-13-1
Article 3. Tombigbee River Valley Water Management District 51-13-101

ARTICLE 1.

TOMBIGBEE VALLEY AUTHORITY.

SEC.
51-13-1. Membership and organization of board.
51-13-3. Powers and duties.
51-13-5. Financing.
51-13-7. Homestead exemption laws not applicable.
51-13-9. Article supplementary to other laws.

§ 51-13-1. Membership and organization of board.

There is hereby created the Tombigbee Valley Authority composed of Clay, Itawamba, Lee, Lowndes, Monroe, Noxubee, Prentiss, Pontotoc, Alcorn, and Tishomingo Counties in the State of Mississippi, to be governed by a board consisting of one member from each such county and three members from the state at large, all to be appointed by the governor to serve for a term of four years or until their successors are appointed and qualified. The governor shall designate in his appointment the chairman and vice-chairman thereof. They shall serve without pay except for their actual traveling expenses and other necessary expenses incurred in the performance of their official duties, to be reimbursed as in the case of state employees under the provisions of general law. Upon appointment, said members shall meet and organize at Columbus, Mississippi, set a regular time and place for the meetings of the authority, secure offices and all necessary equipment, and obtain such engineering, professional, clerical, and other assistance as may be necessary in order to accomplish the purposes of this article. An executive director may be appointed by the board if this is deemed advisable, and salaries of all personnel may be paid out of funds provided under the terms of this article in an amount agreeable to the authority.

SOURCES: Codes, 1942, § 5956-42; Laws, 1956, ch. 171, §§ 1-5.

Cross References — Provision that the Tomigbee Valley Authority shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

Tombigbee River Valley Water Management District, generally, see § 51-13-101 et seq.

§ 51-13-3. Powers and duties.

The Tombigbee Valley Authority is hereby authorized and empowered to do any and all things necessary or desirable in making a survey or surveys of that portion of the Tombigbee River situated in the State of Mississippi and its tributaries to investigate the possibilities of developing that portion of the Tombigbee River lying and being in Mississippi, which comprises a segment from the Tennessee River on the north through the States of Mississippi and Alabama to the Gulf of Mexico at Mobile, Alabama, in co-operation with the federal government and any and all agencies thereof assisting in such survey or proposed plans for projects which upon completion would lead to the industrial development of this state, to the opening of an additional inland waterway to the Gulf of Mexico, and to the control of the flood waters of the Tombigbee River in Mississippi. It is contemplated that plans be considered and surveys made for the opening of a water route from the northern headwaters of the Tombigbee River, and particularly the east branch of the Tombigbee River, its tributaries, and the Tennessee River as a part of the over-all plans to be considered by this authority.

SOURCES: Codes, 1942, § 5956-42; Laws, 1956, ch. 171, §§ 1-5.

Cross References — Tennessee-Tombigbee Waterway bridges, see § 65-26-1 et seq.

§ 51-13-5. Financing.

The authority shall be financed in all of its activities from funds made available by each of the associated counties, and each such county is authorized and empowered to contribute any amount or amounts which the board of supervisors thereof shall deem advisable, acting in their sole discretion, to be paid from the general county fund of the respective counties.

SOURCES: Codes, 1942, § 5956-42; Laws, 1956, ch. 171, §§ 1-5; Laws, 1986, ch. 400, § 34, eff from and after October 1, 1986.

§ 51-13-7. Homestead exemption laws not applicable.

No reimbursement on the additional tax levies herein provided shall be made under the Homestead Exemption Law of 1946, being Sections 27-33-1 through 27-33-61 of the Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5956-42; Laws, 1956, ch. 171, §§ 1-5.

Cross References — Assistance by Research and Development Center in making relevant information available to Cooperative Extension Service for information clearinghouse assisting farmers, see § 69-2-5.

§ 51-13-9. Article supplementary to other laws.

This article shall be considered supplemental and additional to any and all other laws and confers sufficient authority in and of itself for the purposes set forth herein.

SOURCES: Codes, 1942, § 5956-42; Laws, 1956, ch. 171, §§ 1-5.

ARTICLE 3.

TOMBIGBEE RIVER VALLEY WATER MANAGEMENT DISTRICT.

SEC.

51-13-101. Legislative determination and declaration of policy.
51-13-103. General authority to organize.
51-13-105. Board of directors.
51-13-107. Creation of district.
51-13-109. Subsequent members.
51-13-111. Powers of district.
51-13-113. Construction contracts.
51-13-115. Park and recreation facilities.
51-13-117. Rules and regulations.
51-13-119. Appropriation permit.
51-13-121. State tax used for water supply district fund.
51-13-123. Board of directors to issue bonds.
51-13-125. Details of bonds; supplemental powers conferred in issuance of bonds.
51-13-127. Limitation on amount of bonds.
51-13-129. Payments by board of supervisors of member counties.
51-13-131. Additional funds.
51-13-133. Validation of bonds.
51-13-135. Trust agreement.
51-13-137. Refunding bonds.
51-13-139. Bonds to be legal investments.
51-13-141. Depository for funds of district.
51-13-143. Agreements relative to federal highways.
51-13-145. Cooperation with other governmental agencies.
51-13-147. Water management district law controlling.
51-13-149. District and its bonds exempt from taxation.
51-13-151. Preliminary expenses.
51-13-153. Overflow of school lands not to constitute waste.
51-13-155. Savings clause.

§ 51-13-101. Legislative determination and declaration of policy.

It is hereby declared, as a matter of legislative determination, that the waterways and surface waters of the state are among its basic resources, that the overflow and surface waters of the state have not heretofore been conserved to realize their full beneficial use, that the utilization, development, conservation, and regulation of such waters are necessary to insure an adequate flood control program, sanitary water supply at all times, to promote the balanced economic development of the state, and to aid in conservation and development of state forests, irrigation of lands needing irrigation, navigation, and pollution abatement. It is further determined and declared that the preservation, conservation, storage, and regulation of the waters of the Tombigbee River, its tributaries, and its overflow waters for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes, for recreational uses, flood control, timber development, irrigation, navigation, and pollution abatement are, as a matter of public policy, for the general welfare of the entire people of the state.

The creation of the Tombigbee River Valley Water Management District is determined to be necessary and essential to the accomplishment of the aforesaid purposes, and this article operates on a subject in which the state at large is interested. All the terms and provisions of this article are to be liberally construed to effectuate the purposes herein set forth, this being a remedial law.

SOURCES: Codes, 1942, § 5956-131; Laws, 1962, ch. 224, § 1; Laws, 1962, 2d Ex. Sess., ch. 32, § 1, eff from and after passage (approved Dec. 12, 1962).

Cross References — Provision that the Tomigbee River Valley Water Management District shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

ATTORNEY GENERAL OPINIONS

State agencies have only such powers expressly granted to them by statute and such powers as are necessarily implied. There is no authority for Tombigbee River Valley Water Management District to financially assist a member county to obtain and pay for engineering studies on a proposed industrial site or to purchase proposed industrial property. Nichols, February 23, 2007, A.G. Op. #07-00044, 2007 Miss. AG LEXIS 29.

§ 51-13-103. General authority to organize.

The Tombigbee River Valley Water Management District may hereafter be organized in this state under the provisions of this article, in the manner hereinafter provided for. This water management district shall be an agency of the state and a body politic and corporate.

SOURCES: Codes, 1942, § 5956-132; Laws, 1962, ch. 224, § 2; Laws, 1962, 2d Ex. Sess., ch. 32, § 2, eff from and after passage (approved Dec. 12, 1962).

ATTORNEY GENERAL OPINIONS

State agencies have only such powers expressly granted to them by statute and such powers as are necessarily implied. There is no authority for Tombigbee River Valley Water Management District to financially assist a member county to obtain and pay for engineering studies on a proposed industrial site or to purchase proposed industrial property. Nichols, February 23, 2007, A.G. Op. #07-00044, 2007 Miss. AG LEXIS 29.

§ 51-13-105. Board of directors.

All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) Each member of the Tombigbee Valley Authority as created by virtue of Sections 51-13-1 through 51-13-9, whose county becomes a part of the Tombigbee River Valley Water Management District shall be a member of the Board of Directors of the Tombigbee River Valley Water Management District, and each state-at-large member of the Tombigbee Valley Authority shall become a member of the Board of Directors of the Tombigbee River

Valley Water Management District when one or more entire counties become members of the Tombigbee River Valley Water Management District. Such directors shall serve on this board during their term of office on the Tombigbee Valley Authority. In addition, the board of supervisors of each county within the Tombigbee River Basin which elects to become a member of the district shall appoint one (1) board member to serve for a term of four (4) years or until his successor is named. The Governor shall appoint one (1) member from each county added to the Tombigbee River Valley Water Management District which county is not now a member of the Tombigbee Valley Authority, and such member shall serve for a four-year term or until his successor is appointed.

(b) The Department of Environmental Quality, the Department of Wildlife, Fisheries and Parks, the Forestry Commission, and the State Board of Health of the State of Mississippi shall each appoint one (1) director from that department to serve on the board of directors of the Tombigbee River Valley Water Management District, to serve at the pleasure of the entity appointing him but not to exceed four-year terms.

(c) Each director shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(d) Each director shall receive compensation at a per diem rate as provided in Section 25-3-69 for each day or fraction thereof spent in actual discharge of his official duties and shall be reimbursed for mileage and actual expenses incurred in the performance of his official duties in accordance with the requirements of Section 25-3-41.

(e) The board of directors shall annually elect from its number a president and a vice-president of the district and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice-president shall perform all duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine those offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00) with sureties qualified to do business in this state, and the premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the district.

SOURCES: Codes, 1942, § 5956-133; Laws, 1962, ch. 224, § 3; Laws, 1964, ch. 251, § 1, eff from and after passage (approved June 11, 1964); Laws, 1994, ch. 493, § 1, eff from and after July 1, 1994.

Cross References — State officers generally, see § 25-1-1 et seq.
Tombigbee Valley Authority generally, see § 51-13-1 et seq.

§ 51-13-107. Creation of district.

(1) Within twenty (20) days after the passage of this article, the Mississippi Commission on Environmental Quality, State Board of Health, Mississippi Commission on Wildlife, Fisheries and Parks, and the Forestry Commission of the State of Mississippi shall appoint their respective members to the proposed district board of directors as provided in Section 51-13-105. The four (4) appointive members, upon taking the oath as provided, shall meet in the Office of the Mississippi Department of Environmental Quality in Jackson, Mississippi, within ten (10) days and adopt by a majority vote a resolution setting forth their intentions of creating the district and shall forthwith send a certified copy of said resolution to: (1) each member of the Tombigbee Valley Authority as now constituted, (2) the Governor, (3) executive officers of the Mississippi Commission on Environmental Quality, Board of Health, Mississippi Commission on Wildlife, Fisheries and Parks, and Forestry Commission, and (4) the president of the board of supervisors and chancery clerk of each county through which any part of the Tombigbee River or any of its tributaries lie. The four (4) state agencies herein named and the Tombigbee Valley Authority may, within ten (10) days from receipt of said resolution, adopt its own resolution favorable or unfavorable to the creation of said district; and the respective boards of supervisors may at their next regular meeting likewise adopt a resolution favorable or unfavorable to creating said district. All of said resolutions adopted shall be certified by its secretary, clerk, or executive officer and shall be filed with each state agency, political subdivision, or other agency named in Section 55-13-105.

(2) Every board of supervisors of those counties desiring to become members of the district, through which the Tombigbee River or any of its tributaries lie, shall, upon receipt of the certified resolutions mentioned in this section, declare said board's intentions by adopting a resolution expressing its desire to have said district created and to levy an ad valorem tax not to exceed one-half (½) mill on all the taxable property within the Tombigbee Watershed area of said county for the use and benefit of the Tombigbee River Valley Water Management District. The said resolution shall be published once each week for three (3) consecutive weeks in some newspaper published in the county and having a general circulation therein, and if no petition signed by twenty percent (20%) of the qualified electors of the county is filed with the board requesting the calling of an election on the question of the county's participation in the district and the levying of the one-half (½) mill tax levy aforesaid, the board may proceed to have the county become a member of said district and to levy the one-half (½) mill tax levy but if, within twenty-one (21) days after the date of the first publication of said resolution, a petition signed by at least twenty percent (20%) of the qualified electors of said county, requesting an election on the proposition of said county becoming a member of the proposed district and the levying of the one-half (½) mill tax as herein provided, is filed,

said election shall be held and conducted as now provided by law for such elections. If such an election is held and a majority of those voting therein vote for the proposition, the board shall, by appropriate resolution, bring the county into the district and levy the one-half (½) mill tax as otherwise provided by law. If the majority of those voting in such election shall vote against the proposition, then the county shall not become a member of the district nor levy the one-half (½) mill tax; and no further election shall be so conducted until the lapse of two (2) years after the last election.

(3) Whenever an aggregate of six (6) counties have become members of the Tombigbee River Valley Water Management District in the manner provided in this section, the said district shall be created as an agency of the state and a body politic and corporate with all of the powers granted it by statute.

SOURCES: Codes, 1942, § 5956-134; Laws, 1962, ch. 224, § 4; Laws, 1962, ch. 225, § 1; Laws, 1962, 2d Ex. Sess., ch. 32, § 3; Laws, 2000, ch. 516, § 95, eff from and after passage (approved Apr. 30, 2000.)

§ 51-13-109. Subsequent members.

Any eligible county may become a member of the district, subsequent to its creation, in the manner as the original counties became members and new counties shall have the same power and authority and be entitled to equal consideration of the district's board of directors, not inconsistent with the purposes of this article.

SOURCES: Codes, 1942, § 5956-134; Laws, 1962, ch. 224, § 4; Laws, 1962, ch. 225, § 1; Laws, 1962, 2d Ex. Sess., ch. 32, § 3, eff from and after passage (approved Dec. 12, 1962).

§ 51-13-111. Powers of district.

The Tombigbee River Valley Water Management District through its board of directors is hereby empowered:

(a) To develop, in conjunction with the United States Army Corps of Engineers, United States Secretary of Agriculture, or with the head of any other federal or state agency as may be involved, plans for public works of improvement for the prevention of floodwater damage, or the conservation, development, navigation, utilization and disposal of water, including the impoundment, diversion, flowage and distribution of waters for beneficial use as defined in Chapter 3 of this title.

To enter into agreements with the United States of America, as represented by the United States Army Corps of Engineers, to meet the requirements of local cooperation for flood control and navigation projects as set out in House Document No. 167, 84th Congress, First Session, as authorized by Public Law 85-500, 85th Congress, dated July 3, 1958, as amended, and House Document No. 486, 79th Congress, Second Session, as approved by Public Law 525, 79th Congress, as amended.

(b) To impound overflow water and the surface water of the Tombigbee River or its tributaries within the project area, within or without the district, at the place or places and in the amount as may be approved by the Office of Land and Water Resources of the State of Mississippi, by the construction of a dam or dams, reservoir or reservoirs, work or works, plants and any other necessary or useful related facilities contemplated and described as a part of the project, within or without the district, to control, store and preserve these waters, and to use, distribute, and sell them, to construct or otherwise acquire within the project area all works, plants, or other facilities necessary or useful to the project for processing the water and transporting it to cities and other facilities for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, and is hereby given the power to control open channels for water delivery purposes and water transportation.

(c) To acquire and develop any other available water necessary or useful to the project and to construct, acquire and develop all facilities within the project area deemed necessary or useful with respect thereto, including terminals.

(d) To forest and reforest, and to aid in the foresting and reforesting of the project area, and to prevent and to aid in the prevention of soil erosion and flood within the area; to control, store, and preserve within the boundaries of the project area the waters of the Tombigbee River or any of its tributaries for irrigation of lands and for prevention of water pollution.

(e) To acquire by condemnation all property of any kind, real, personal, or mixed, or any interest therein, within or without the boundaries of the district, necessary for the projects and the exercise of the powers, rights, privileges and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone, or telegraph companies, and according to the provisions of Section 29-1-1. For the purposes of this article the right of eminent domain of the district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power and other companies or corporations and shall be sufficient to enable the acquisition of county roads, state highways, or other public property in the project area, and the acquisition or relocation of this property in the project area. The cost of right-of-way purchases, rerouting and elevating all other county-maintained roads affected by construction shall be borne by the water management district, and new construction shall be of equal quality as in roads existing as of May 1, 1962. The county in which the work is done may assist in these costs if the board of supervisors desires.

The amount and character of interest in land, other property, and easements to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area; sand and gravel shall not be considered as minerals within the meaning of this section; and

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing, or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines, and other means of transporting these products by reason of the inclusion of the lands or mineral interests within the project area, whether below or above the waterline, but any activities shall be under reasonable regulations by the board of directors that will adequately protect the project; and

(iii) In drilling and developing, these persons are hereby vested with a special right to have mineral interests integrated and their lands developed in the drilling unit or units that the State Oil and Gas Board shall establish after due consideration of the rights of all owners to be included in the drilling unit.

Moreover, when any site or plot of land is to be sold to any person, firm, or corporation for the purpose of operating recreational facilities thereon for profit, the board shall, by resolution, specify the terms and conditions of the sale and shall advertise for public bids thereon. When these bids are received, they shall be publicly opened by the board, and the board shall thereupon determine the highest and best bid submitted and shall immediately notify the former owner of the site or plot of the amount, terms, and conditions of the highest and best bid. The former owner of the site or plot shall have the exclusive right at his option, for a period of thirty (30) days after written notice is received by the landowner of the determination of the highest and best bid by the board, to purchase the site or plot of land by meeting the highest and best bid and by complying with all terms and conditions of the sale as specified by the board. However, the board shall not sell to any former owner more land than was taken from the former owner for the construction of the project, or one-quarter (¼) mile of shoreline, whichever shall be the lesser. If this option is not exercised by the former owner within a period of thirty (30) days, the board shall accept the highest and best bid submitted.

Any bona fide resident householder actually living or maintaining a residence on land taken by the district by condemnation shall have the right to repurchase his former land from the board of directors for a price not exceeding the price paid for condemning his land, plus any permanent improvements.

In addition and notwithstanding any other provision in this section to the contrary, the board may lease or rent all or any portion of any property that it owns to any person, firm, or corporation for the purpose of operating recreational facilities for profit or not for profit or for any other public purpose provided the land is open for the use of the general public or is otherwise used for the public benefit and upon any other terms and conditions as the board may determine. The leasing or renting of all or any portion of any such land upon said conditions shall require a resolution duly adopted by the board and shall be exempt from any bid requirements in this section.

(f) To require the necessary relocation of roads and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of relocation. Further, the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of roads, highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities, and to convey them to the owners thereof in connection with the relocation as a part of the construction of the project. However, the directors of the district shall not close any public access road to the project existing prior to the construction of the reservoir unless the board of supervisors of the county in which the road is located agrees thereto.

(g) To overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(h) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate all facilities of any kind within the project area necessary or convenient to the project and to the exercise of powers, rights, privileges and functions.

(i) To sue and be sued in its corporate name.

(j) To adopt, use, and alter a corporate seal.

(k) To make bylaws for the management and regulation of its affairs.

(*l*) To employ engineers, attorneys, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and to pay reasonable compensation for these services; for all services in connection with the issuance of bonds as provided in this article, the attorney's fee shall not exceed one-quarter of one percent (¼ of 1%) of the principal amount of these bonds. For any other services, only reasonable compensation shall be paid for these services. The board shall have the right to employ a general manager, who shall, at the discretion of the board, have the power to employ and discharge employees. Without limiting the generality of the foregoing, it may employ fiscal agents or advisors in connection with its financing program and in connection with the issuance of its bonds.

(m) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this article.

(n) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(o) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to these agencies for grants to construct, maintain or operate any project or projects which hereafter may be undertaken or contemplated by the district.

(p) To do any other acts or things necessary, requisite, or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by this article or any other law.

(q) To make contracts in the issuance of bonds that may be necessary to insure the marketability thereof.

(r) To enter into contracts with municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities or commodities that the project may provide. The district is also authorized to contract with any municipality, corporation, or public agency for the rental, leasing, purchase, or operation of the water production, water filtration or purification, water supply and distributing facilities of the municipality, corporation, or public agency upon consideration as the district and entity may agree. Any contract may be upon any terms and for any time as the parties may agree, and it may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of these bonds, and all obligations are paid. Any contract with any political subdivision shall be binding upon these political subdivisions according to its terms, and the municipalities or other political subdivisions shall have the power to enter into these contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of the municipality or other political subdivision. These contracts may include, within the discretion of the governing authorities, a pledge of the full faith and credit of the political subdivisions for the performance thereof.

(s) To fix and collect charges and rates for any services, facilities or commodities furnished by it in connection with the project, and to impose penalties for failure to pay these charges and rates when due.

(t) To operate and maintain within the project area, with the consent of the governing body of any city or town located within the district, any works, plants or facilities of any city deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell, or otherwise lawfully dispose of any property of any kind, real, personal, or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, the board shall advertise these lands for sale to the highest and best bidder for cash and shall receive and publicly open the bids thereon. The board shall, by resolution, determine the highest and best bid submitted for the land and shall thereupon notify the former owner, his/her heirs or devisees, by registered mail of the land to be sold and the highest and best bid received therefor, and the former owner, or his/her heirs or devisees, shall have the exclusive right at his/her or their option for a period of thirty (30) days in which to meet such highest and best bid and to purchase the property. Provided further, that the board may transfer title to that certain property known as the Trace State Park in Pontotoc County to the Department of Environmental Quality; provided, however, that any of the property that is under current lease shall not be included in the transfer. Such transfer of title shall require a resolution duly adopted by the board and by the Commission on Environmental Quality and shall be exempt from any bid requirements herein. In addition, the board may transfer title to that certain property known as the Elvis Presley Park in Lee County to Lee County, Mississippi, upon the terms and conditions as it may determine. The transfer of title shall require a resolution duly adopted by the board and shall be exempt from any bid requirement in this section. In addition, the board may transfer title to all or any portion of that certain property known as the Elvis Presley Park in Lee County to the Mississippi Department of Wildlife, Fisheries and Parks upon the terms and conditions as it may determine, including, but not limited to, authorizing the board to pay the sum of Two Hundred Thousand Dollars ($200,000.00) to the Mississippi Department of Wildlife, Fisheries and Parks at the time of the transfer with such funds to be used by the Mississippi Department of Wildlife, Fisheries and Parks for the construction of an office building on the Elvis Presley Park for use by the Mississippi Department of Wildlife, Fisheries and Parks. Such transfer of title and the payment of such sum of money shall require a resolution duly adopted by the board and by the Mississippi Department of Wildlife, Fisheries and Parks and shall be exempt from any bid requirement in this section.

(w) To prevent or aid in the prevention of damages to persons or property from the waters of the Tombigbee River or any of its tributaries.

(x) To acquire by purchase, lease, gift or in any other manner (otherwise than by condemnation) and to maintain, use, and operate all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges and functions conferred upon the district by this article.

(y) In the purchase of or in the entering into of all lease-purchase agreements for supplies, equipment, heavy equipment, and the like, the directors shall in all instances comply with the provisions of law pertaining to public purchases by public bids on these supplies and equipment.

(z) In addition to, or in conjunction with, any other powers and duties of the district arising under this chapter, to exercise those powers, duties and functions of a joint water management district set forth in Sections 51-8-27 through 51-8-55, except the power of eminent domain under Section 51-8-33. Before exercising those powers and duties, the district must comply with the provisions of Sections 51-8-63 and 51-8-65. In exercising the functions of a joint water management district, the district may apply to the Environmental Quality Permit Board for delegation of those powers and duties as provided by Section 51-3-15, and to apply to the Mississippi Commission on Environmental Quality for delegation of those powers and duties provided by Section 51-3-21.

SOURCES: Codes, 1942, § 5956-135, Laws, 1962, ch. 224, § 5; Laws, 1962 2d Ex. Sess., ch. 32, § 4; Laws, 1986, ch. 406; Laws, 1993, ch. 615, § 9; Laws, 1995, ch. 616, § 6; Laws, 1998, ch. 554, § 1; Laws, 2002, ch. 625, § 5, eff from and after passage (approved Apr. 25, 2002.)

Cross References — Taking of private property for public use, see MS Const. Art. 3, § 17.

Right of eminent domain generally, see § 11-27-1 et seq.

Reforestation generally, see § 49-19-3.

Conservation and development of water resources generally, see § 51-3-1 et seq.

Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

Issuance of bonds by board of directors, see § 51-13-123 et seq.

State oil and gas board generally, see § 53-1-1 et seq.

Tennessee-Tombigbee Waterway bridges, see § 65-26-1 et seq.

Federal Aspects — Public Law 85-500, see 33 USCS §§ 545a, 610, 633, and 701b-8a, and 43 USCS §§ 390b and 390b note.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 51-13-111(x) allows Tombigbee River Valley Water Management District to enter into agreement with private landowner whereby District conveys to him property it no longer needs in exchange for easements it does need to complete project; however, this exchange could be made only if fair market value of easements to be acquired by District is equal to or greater than fair market value of land to be conveyed by it to private landowner; otherwise, exchange could only be made if private landowner paid to District difference in two fair market prices. Applewhite, Apr. 14, 1993, A.G. Op. #93-0233.

If Tombigbee River Valley Water Management District finds on its minutes that easements to be acquired from private landowner are necessary for project and convenient to exercise of District's powers, and if it further finds that lands previously conveyed to it by private landowner are no longer necessary for project or useful to District, and, if District finds that fair market value of easements to be obtained is equal to or greater than fair market value of lands to be conveyed, then exchange may be made whereby District reconveys these lands to private landowner in exchange for easements it needs. Applewhite, Apr. 14, 1993, A.G. Op. #93-0233.

The Tombigbee River Valley Water Management District may acquire property by first contacting the Secretary of State in accordance with Section 29-1-1(6); if no suitable state-held land is available, then the District may identify suitable property and begin negotiations in compliance with Section 43-37-3. Applewhite, Jan. 10, 2003, A.G. Op. #02-0765.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-13-113. Construction contracts.

All construction contracts by the district, where the amount of the contract shall exceed two thousand, five hundred dollars ($2,500.00), shall be made upon at least three weeks' public notice by advertisement in a newspaper of general circulation in the district, which notice shall state the thing to be done and invite sealed proposals, to be filed with the secretary of the district, to do the work; and in all such cases, before the notice shall be published, the plans and specifications for the work shall be filed with the secretary of the district and there remain. The board of directors of the district shall award the contract to the lowest and best bidder, who will comply with the terms imposed by such board and enter into bond with sufficient sureties, to be approved by the board, in such penalty as shall be fixed by such board but in no case to be less than the contract price, conditioned for the prompt, proper, and efficient performance of the contract.

SOURCES: Codes, 1942, § 5956-136; Laws, 1962, ch. 224, § 6, eff from and after passage (approved May 1, 1962).

§ 51-13-115. Park and recreation facilities.

The Tombigbee River Valley Water Management District is authorized to establish or otherwise provide for public parks and recreation facilities and for the preservation of fish and wildlife, and to acquire land otherwise than by condemnation except as provided in subsection (e) of Section 51-13-111 for such purposes, within the project area.

SOURCES: Codes, 1942, § 5956-137; Laws, 1962, ch. 224, § 7, eff from and after passage (approved May 1, 1962).

§ 51-13-117. Rules and regulations.

(1) The board of directors of the district shall have the power to adopt and promulgate all reasonable regulations to secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district, to prevent waste of water or the unauthorized use thereof, and to regulate residence, hunting, fishing, boating, camping, and all recreational and business privileges along or around any such reservoir, any body of land, or any easement owned by the district.

(2) Such district may prescribe reasonable penalties for the breach of any regulation of the district.

SOURCES: Codes, 1942, § 5956-138; Laws, 1962, ch. 224, § 8, eff from and after passage (approved May 1, 1962).

§ 51-13-119. Appropriation permit.

The district is empowered to obtain through appropriate hearings an appropriation permit or permits from the board of water commissioners of the State of Mississippi as provided for in Sections 51-3-1 through 51-3-53.

SOURCES: Codes, 1942, § 5956-139; Laws, 1962, ch. 224, § 9, eff from and after passage (approved May 1, 1962).

Editor's Note — Section 51-3-53 referred to in this section was repealed by Laws of 1978, ch. 484, § 37, eff from and after July 1, 1978.

§ 51-13-121. State tax used for water supply district fund.

In each county of the State of Mississippi which is part of the Tombigbee River Valley Water Management District, beginning with the ad valorem tax assessment for the calendar year 1964, payable on or before February 1, 1965, and so long as any bonds issued hereunder and other obligations are outstanding, the tax collector of said county shall pay into the depository selected by said water district for said purpose the amount of two mills of all ad valorem taxes due by said county to the State of Mississippi which is collected by the tax collector of said county, which may be collected by any lawful taxing agency of said county and state and for said county and the State of Mississippi shall continue to levy not less than two mills ad valorem taxes on each county in the district so long as any obligations or bonds issued pursuant to this article remain outstanding.

SOURCES: Codes, 1942, § 5956-140; Laws, 1962, ch. 224, § 10, eff from and after passage (approved May 1, 1962).

Cross References — Details of bonds issued pursuant to this article, see § 51-13-125.

§ 51-13-123. Board of directors to issue bonds.

The board of directors of the district is hereby authorized and empowered to borrow money or issue bonds of the district for the purpose of paying the costs of acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified herein, including related facilities and including all financing and financial advisory charges, interest during construction, engineering, architectural, legal, and other expenses incidental to and necessary for the foregoing, or for the carrying out of any power conferred by this article. Said board of directors is authorized and empowered to borrow money and issue bonds at such times and in such amounts as shall be provided for by resolution of the said board of directors, not to exceed the limitation prescribed in Section 51-13-127. All such bonds so issued by said district shall be secured solely by a pledge of the avails of the two mills ad valorem tax levy provided for in Section 51-13-121 or so much thereof as may be necessary therefor, and of the net revenues as hereinafter defined or so much thereof as may be necessary therefor. Such bonds shall not constitute general obligations of the State of Mississippi or of the counties comprising said district, and such bonds shall not be secured by a pledge of the full faith, credit, and resources of said state or of said counties. Bonds of the district shall not be included in computing any present or future debt limit of any county in such district under any present or future law. "Revenues" as used in this article shall mean all charges, rentals, tolls, rates, gifts, grants, tax proceeds, moneys, and all other funds coming into the possession of the district by virtue of the provisions of this article, except the proceeds from the sale of bonds issued hereunder, and except the avails of the two mill ad valorem tax levy provided for in Section 51-13-121. "Net revenues" as used in this article shall mean the revenues after payment of costs and expenses of operation and maintenance of the project and related facilities.

SOURCES: Codes, 1942, § 5956-141; Laws, 1962, ch. 224, § 11; Laws, 1962, 2d Ex. Sess., ch. 32, § 5; Laws, 1964, ch. 251, § 2, eff from and after passage (approved June 11, 1964).

Cross References — Additional powers conferred in connection with issuance of bonds, see §§ 51-13-125 and 31-21-5.

Bonds provided for in this section being negotiable instruments within meaning of Uniform Commercial Code, see § 51-13-125.

§ 51-13-125. Details of bonds; supplemental powers conferred in issuance of bonds.

All such bonds provided for by Section 51-13-123 shall be negotiable instruments within the meaning of the Uniform Commercial Code of this state, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, it shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. Such bonds shall bear interest at such rate or rates, not exceeding six percent (6%) per annum, as may be determined by the sale of such bonds. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of directors. However, no bond shall have a longer maturity than forty (40) years from January 1, 1965, and the first maturity date thereof shall be not more than five (5) years from the date of such bonds. The denomination, form and place or places of payment of such bonds shall be fixed in the resolution of the board of directors of the district. Such bonds shall be signed by the president and secretary of such board with the seal of the district affixed thereto, but the coupons may bear only the facsimile signatures of such president and secretary. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any such bond may be for a period not exceeding one (1) year.

Such bonds may be called in, paid and redeemed in inverse numerical order on any interest date prior to maturity, upon not less than thirty (30) days' notice to the paying agent or agents designated in such bonds, and at such premium as may be designated in such bonds. In no case shall any premiums exceed six percent (6%) of the face value of such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the avails of the two (2) mills ad valorem tax levy provided for in Section 51-13-121, or so much thereof as may be necessary therefor, and of the net revenues as hereinabove defined or so much thereof as may be necessary therefor, and that they do not constitute general obligations of the state of Mississippi or of the counties comprising said district, and are not secured by a pledge of the full faith, credit and resources of said state or of such counties.

All such bonds as provided for herein shall be sold at public sale as now provided by law. No such sale shall be at a price so low as to require the payment of interest on the money received therefor at more than six percent (6%) per annum computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This article shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-142; Laws, 1962, ch. 224, § 12; Laws, 1962, 2d Ex. Sess., ch. 32, § 6; Laws, 1964, ch. 251, § 3; Laws, 1983, ch. 494, § 19, eff from and after passage (approved April 11, 1983).

Cross References — Commercial paper under the Uniform Commercial Code, see § 75-3-101 et seq.

§ 51-13-127. Limitation on amount of bonds.

Bonds issued pursuant to this article shall not exceed twenty-five million dollars ($25,000,000.00) in principal amount.

SOURCES: Codes, 1942, § 5956-143; Laws, 1962, ch. 224, § 13, eff from and after passage (approved May 1, 1962).

§ 51-13-129. Payments by board of supervisors of member counties.

The board of supervisors of each county becoming a member of the Tombigbee River Valley Water Management District shall pay or cause to be paid to the depository of said district a sum equal to one-half (½) mill on all of the taxable property within the Tombigbee Watershed area of the said county, beginning with the tax assessment for the calendar year 1964; and such payments shall be made and continued as long as there remains unpaid and outstanding any bonded indebtedness or obligations created by the district so created under this article. Any such board of supervisors shall provide the district the sum equal to the one-half (½) mill levy by appropriation of an equivalent sum from the general fund of the county.

SOURCES: Codes, 1942, § 5956-144; Laws, 1962, ch. 224, § 14; ch. 225, § 2; Laws, 1962, 2d Ex. Sess., ch. 32, § 7; Laws, 1986, ch. 400, § 35, eff from and after October 1, 1986.

Cross References — Jurisdiction and powers of board of supervisors, generally, see § 19-3-41.

Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

§ 51-13-131. Additional funds.

To provide additional funds for the planning, undertaking, completing and maintenance of any special work or construction project in a county as part of the long range development of the Tombigbee River Valley Water Management District, the respective boards of supervisors may set aside, appropriate and expend moneys from the general fund which shall be placed in a depository of the district designated for such purpose as a special fund, and shall be used by the district for no other purpose.

SOURCES: Codes, 1942, § 5956-144; Laws, 1962, ch. 224, § 14; ch. 225, § 2; Laws, 1962, 2d Ex. Sess., ch. 32, § 7; Laws, 1986, ch. 400, § 36, eff from and after October 1, 1986.

Cross References — Homestead exemptions, see § 27-33-3.

Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

§ 51-13-133. Validation of bonds.

All bonds issued pursuant to this article shall be validated as now provided by law of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972. The services of the state's bond attorney may be employed in the preparation of such bond resolutions, forms or proceedings as may be necessary, for which he shall be paid a reasonable fee. Such validation proceedings shall be instituted in the chancery court of the county in which the principal office of the district is located, but notice of such validation proceedings shall be published at least two times in a newspaper of general circulation and published in each of the counties comprising the Tombigbee River Valley Water Management District, the first publication of which in each case shall be made at least ten days preceding the date set for the validation.

SOURCES: Codes, 1942, § 5956-145; Laws, 1962, ch. 224, § 15, eff from and after passage (approved May 1, 1962).

§ 51-13-135. Trust agreement.

At the discretion of the board of directors of the district any bonds provided for in Section 51-13-123 may be further secured by a trust agreement between the board of directors and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the right and remedies of the bondholders as are reasonable and proper and not in violation of law. The trust agreement may contain provision for the issuance of additional bonds for any of the purposes authorized by this article, which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein. The trust agreement may include provisions to the effect that if there is any default in the payment of principal or interest on any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer the properties and facilities of the district, including authority to sell or make contracts for the sale of any services, facilities, or commodities of the district or to renew such contracts, subject to the approval of the court appointing said receiver; and with power to provide for the payment of such bonds outstanding, or the payment of operating expenses, and to apply the income and revenues to the payment of said bonds and interest thereon in accordance with the resolution of the board of directors authorizing the issuance of such bonds and said trust agreement. The fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee upon default in the payment of principal and interest on the bonds.

SOURCES: Codes, 1942, § 5956-146; Laws, 1962, ch. 224, § 16, eff from and after passage (approved May 1, 1962).

§ 51-13-137. Refunding bonds.

The board of directors of the district is hereby authorized to provide by resolution for the issuance of refunding bonds of the district for the purpose of refunding any bonds then outstanding and issued under authority of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such refunding bonds, the maturity and other details thereof, and the rights, duties, and obligations of the board of trustees and of the district in respect to such bonds shall be governed by the provisions of this article, in so far as they are applicable. In no event shall such bonds mature over a period of time exceeding forty years from January 1, 1964.

SOURCES: Codes, 1942, § 5956-147; Laws, 1962, ch. 224, § 17, eff from and after passage (approved May 1, 1962).

§ 51-13-139. Bonds to be legal investments.

All bonds of the district are hereby declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, and for funds of the Mississippi Public Employees' Retirement System. Such bonds shall be eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

SOURCES: Codes, 1942, § 5956-148; Laws, 1962, ch. 224, § 18, eff from and after passage (approved May 1, 1962).

§ 51-13-141. Depository for funds of district.

(1) The board of directors shall designate one or more qualified state depositories within the district to serve as depositories for the funds of the district, and all funds of the district other than funds required by any trust agreement to be deposited, from time to time, with the trustee or any paying agent for outstanding bonds of the district, shall be deposited in such depository or depositories.

(2) Before designating a depository or depositories, the board of directors shall issue a notice stating the time and place the board will meet for such purpose and inviting the qualified state depositories in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. Such notice shall be published one (1) time in a newspaper or newspapers published in the district and specified by the board.

(3) At the time mentioned in the notice, the board shall consider the applications and the management and condition of the depositories filing them, and shall designate as depositories the qualified state depository or depositories which offer the most favorable terms and conditions for the handling of the funds of the district and which the board finds have proper management and are in condition to warrant handling of district funds, and in the manner as provided under the chapter on depositories. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds. Membership on the board of directors of an officer or director of a depository shall not disqualify such depository from being designated as a depository.

(4) If no applications acceptable to the board are received by the time stated in the notice, the board shall designate some qualified state depository or depositories within the district upon such terms and conditions as it may find advantageous to the district. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

SOURCES: Codes, 1942, § 5956-149; Laws, 1962, ch. 224, § 19; Laws, 1988, ch. 473, § 13, eff from and after December 1, 1988.

§ 51-13-143. Agreements relative to federal highways.

The board of directors of the Tombigbee River Valley Water Management District is hereby authorized and empowered to negotiate and contract with the United States of America, or any agency thereof, concerning all lands, easements, and rights of way necessary for the relocation of any federal road, highway, parkway, or for the facilities appurtenant thereto.

SOURCES: Codes, 1942, § 5956-150; Laws, 1962, ch. 224, § 20, eff from and after passage (approved May 1, 1962).

§ 51-13-145. Cooperation with other governmental agencies.

The Tombigbee River Valley Water Management District shall have authority to act jointly with political subdivisions of the state and agencies, commissions, and instrumentalities thereof, and with the federal government and other agencies thereof in the performance of the purposes and services authorized in this article, upon such terms as may be agreed upon by the directors.

The board of directors of the district shall have the authority to negotiate and contract with the Secretary of the Army under the provisions of public law 653, 85th Congress, or other applicable law or regulation written pursuant thereto.

SOURCES: Codes, 1942, § 5956-151; Laws, 1962, ch. 224, § 21, eff from and after passage (approved May 1, 1962).

§ 51-13-147. Water management district law controlling.

The provisions of any other law, general, special, or local, except as provided in this article, shall not limit or restrict the powers granted by this article. The water management district herein provided for shall not be subject to regulation or control by the public service commission.

SOURCES: Codes, 1942, § 5956-152; Laws, 1962, ch. 224, § 22, eff from and after passage (approved May 1, 1962).

§ 51-13-149. District and its bonds exempt from taxation.

The accomplishment of the purposes stated in this article being for the benefit of the people of this state and for the improvement of their properties and industries, the district in carrying out the purposes of this article will be performing an essential public function and shall not be required to pay any tax or assessment on the projects and related facilities or any part thereof; and the interest on the bonds issued hereunder shall at all times be free from taxation within this state. The state hereby covenants with the holders of any bonds to be issued hereunder that the Tombigbee River Valley Water Management District shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Codes, 1942, § 5956-153; Laws, 1962, ch. 224, § 23, eff from and after passage (approved May 1, 1962).

Cross References — Exemptions from taxation generally, see § 27-31-1 et seq.

§ 51-13-151. Preliminary expenses.

Any municipality or county which is within the territorial limits of the district may advance funds to said district to pay the preliminary expenses, including engineers' reports, organization, or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provision of any law to the contrary, any such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing, for the purpose of making such advances. The board of directors is hereby authorized to repay any such advances from the proceeds of any funds for bonds issued under the provisions of this article.

Any board of supervisors may, in its discretion, transfer any funds authorized by Sections 51-13-129 and 51-13-131, to the depository of the Tombigbee River Valley Water Management District to be expended for any of the purposes of the district. The said district is authorized to expend all funds coming into its depository for any legitimate purpose authorized by law.

SOURCES: Codes, 1942, § 5956-154; Laws, 1962, ch. 224, § 24; Laws, 1962, 2d Ex. Sess., ch. 32, § 8, eff from and after passage (approved Dec. 12, 1962).

§ 51-13-153. Overflow of school lands not to constitute waste.

It is hereby declared as a matter of legislative determination that the overflow and inundation of sixteenth section lands or in lieu lands shall not constitute legal waste of such lands. The district shall pay a reasonable rental for the use of such lands to be overflowed, to be determined as provided by law in such cases. Any sixteenth section lands that have been flooded shall be reforested before this project shall ever be abandoned.

SOURCES: Codes, 1942, § 5956-155; Laws, 1962, ch. 224, § 25, eff from and after passage (approved May 1, 1962).

Cross References — Sixteenth section and lieu lands generally, see § 29-3-1 et seq.

§ 51-13-155. Savings clause.

Nothing in this article shall be construed to violate any provision of the federal or state constitutions, and all acts done under this article shall be done in such manner as will conform thereto, whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide any alternative procedure conformable with such constitutions. If any provisions of this article shall be invalid, such fact shall not affect the creation of the district or the validity of any other provision of this article.

SOURCES: Codes, 1942, § 5956-156; Laws, 1962, ch. 224, § 26, eff from and after passage (approved May 1, 1962).

CHAPTER 15

Pat Harrison Waterway Commission and District

Article 1. Pat Harrison Waterway Commission 51-15-1
Article 3. Pat Harrison Waterway District 51-15-101

ARTICLE 1.

PAT HARRISON WATERWAY COMMISSION.

SEC.
51-15-1. Membership and organization of board.
51-15-3. Powers and duties.
51-15-5. Financing.
51-15-7. Homestead exemption laws not applicable.
51-15-9. Article supplementary to other laws.

§ 51-15-1. Membership and organization of board.

There is hereby created the Pat Harrison Waterway Commission composed of Clarke, Covington, Forrest, George, Greene, Jackson, Jasper, Jones, Lamar, Lauderdale, Newton, Perry, Smith, Stone, and Wayne Counties in the State of Mississippi, to be governed by a board consisting of one member from each such county and three members from the state at large, all to be appointed by the governor to serve for a term of four years or until their successors are appointed and qualified. The governor shall designate in his appointment the chairman and vice-chairman thereof. They shall serve without pay except for their actual traveling expenses and other necessary expenses incurred in the performance of their official duties, to be reimbursed as in the case of state employees under the provisions of general law. Upon appointment, said members shall meet and organize at Hattiesburg, Mississippi, and set a regular time and place for the meetings of the commission, secure offices and all necessary equipment, and obtain such engineering, professional, clerical, and other assistance as may be necessary in order to accomplish the purposes of this article. An executive director may be appointed by the board if this is deemed advisable, and salaries of all personnel may be paid out of funds provided under the terms of this article in an amount agreeable to the commission.

SOURCES: Codes, 1942, § 5956-43; Laws, 1956, ch. 168, §§ 1-5; Laws, 1962, ch. 223, eff from and after passage (approved May 31, 1962).

Cross References — Provision that the Pat Harrison Waterway Commission shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

Pat Harrison Waterway District generally, see § 51-15-101 et seq.

§ 51-15-3. Powers and duties.

The Pat Harrison Waterway Commission is hereby authorized and empowered to do any and all things necessary and desirable in making a survey or surveys of the Pascagoula, Leaf, and Chickasawhay Rivers, the Tallahala Creek, and their tributaries in co-operation with the federal government and other agencies of the State of Mississippi; to promote the establishment of barge canals linking the cities of Meridian, Hattiesburg, Laurel, and other cities and communities along the Pascagoula, Leaf, and Chickasawhay Rivers, the Tallahala Creek, and their tributaries with the Gulf of Mexico. Each county represented on said commission, or two or more such counties acting in concert, pursuant to a plan to be approved by said commission, are authorized to improve all or any part of such waterways within said county or counties for navigation or flood control purposes.

SOURCES: Codes, 1942, § 5956-43; Laws, 1956, ch. 168, §§ 1-5; Laws, 1962, ch. 223, eff from and after passage (approved May 31, 1962).

Cross References — Provision that the Pat Harrison Waterway District shall receive assistance from the Division of Regional Water Resources, see § 51-3-18.

§ 51-15-5. Financing.

The commission shall be financed in all of its activities from funds made available by each of the associated counties, and each such county is authorized and empowered to contribute any amount or amounts which the board of supervisors thereof shall deem advisable, acting in their sole discretion, to be paid from the general county fund of the respective counties.

SOURCES: Codes, 1942, § 5956-43; Laws, 1956, ch. 168, §§ 1-5; Laws, 1962, ch. 223; Laws, 1986, ch. 400, § 37, eff from and after October 1, 1986.

§ 51-15-7. Homestead exemption laws not applicable.

No reimbursement on the additional tax levies herein provided shall be made under the Homestead Exemption Law of 1946, being Sections 27-33-1 through 27-33-61 of the Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5956-43; Laws, 1956, ch. 168, §§ 1-5; Laws, 1962, ch. 223, eff from and after passage (approved May 31, 1962).

§ 51-15-9. Article supplementary to other laws.

This article shall be considered supplemental and additional to any and all other laws, and confers sufficient authority in and of itself for the purposes set forth herein.

SOURCES: Codes, 1942, § 5956-43; Laws, 1956, ch. 168, §§ 1-5; Laws, 1962, ch. 223, eff from and after passage (approved May 31, 1962).

Article 3.

Pat Harrison Waterway District.

Sec.

51-15-101. Legislative determination and declaration of policy.
51-15-103. General authority to reorganize.
51-15-105. Board of directors.
51-15-107. Petition for creation of district.
51-15-109. Proceedings after filing of petition.
51-15-111. Hearing.
51-15-113. Order and notice of election.
51-15-115. Election.
51-15-117. Appeals.
51-15-118. Withdrawal of county from district.
51-15-119. Powers of district.
51-15-120. Repealed.
51-15-121. Repealed
51-15-123. Park and recreation facilities.
51-15-125. Rules and regulations.
51-15-127. Appropriation permit.
51-15-129. District funding.
51-15-131. Board of directors to issue bonds.
51-15-133. Details of bonds; supplemental powers conferred in issuance of bonds.
51-15-135. Limitation on amount of bonds.
51-15-136. Borrowing money or issuance of bonds after April 6, 1995.
51-15-137. Repealed
51-15-139. Validation of bonds.
51-15-141. Trust agreement.
51-15-143. Refunding bonds.
51-15-145. Bonds to be legal investments.
51-15-147. Depository for funds of district.
51-15-149. Agreements relative to federal highways.
51-15-151. Cooperation with other governmental agencies.
51-15-153. Water management district law controlling.
51-15-155. District and its bonds exempt from taxation.
51-15-157. Preliminary expenses.
51-15-158. Budget of estimated expenditures for support, maintenance and operation of district.
51-15-159. Overflow of school lands not to constitute waste.
51-15-161. Savings clause.
51-15-163. Renewal of residential lease from district; determination of maximum annual rental; default or breach.
51-15-165. Renewal of commercial property lease from district; appraisal establishing fair market rental value required.

§ 51-15-101. Legislative determination and declaration of policy.

It is hereby declared, as a matter of legislative determination, that the waterways and surface waters of the state are among its basic resources, that the overflow and surface waters of the state have not heretofore been conserved to realize their full beneficial use, that the utilization, development, conservation, and regulation of such waters are necessary to insure an adequate flood control program, sanitary water supply at all times, to promote the balanced economic development of the state, and to aid in conservation and development of state forests, irrigation of lands needing irrigation, and pollution abatement. It is further determined and declared that the preservation, conservation, storage, and regulation of the waters of the Pat Harrison Waterway District overflow waters for domestic, municipal, commercial, industrial, agricultural, and manufacturing purposes, for recreational uses, for flood control, timber development, irrigation, and pollution abatement are, as a matter of public policy, for the general welfare of the entire people of the state.

The creation of the Pat Harrison Waterway District is determined to be necessary and essential to the accomplishment of the aforesaid purposes, and this article operates on a subject in which the state at large is interested. All the terms and provisions of this article are to be liberally construed to effectuate the purposes herein set forth, this being a remedial law.

SOURCES: Codes, 1942, § 5956-171; Laws, 1962, ch. 222, § 1, eff from and after passage (approved June 1, 1962).

§ 51-15-103. General authority to reorganize.

The Pat Harrison Waterway Commission may hereafter be organized in this state under the provisions of this article, in the manner hereafter provided for. This water management district shall be an agency of the state and a body politic and corporate, and may be composed and is composed of the following counties, to-wit: Clarke, Covington, Forrest, George, Greene, Jackson, Jasper, Jones, Lamar, Lauderdale, Newton, Perry, Smith, Stone, and Wayne.

SOURCES: Codes, 1942, § 5956-172; Laws, 1962, ch. 222, § 2, eff from and after passage (approved June 1, 1962).

§ 51-15-105. Board of directors.

(1) All powers of the district shall be exercised by a board of directors to be composed of the following:

(a) [Repealed]

(b) From and after January 9, 1996, the Governor shall appoint three (3) members of the Board of Directors of the Pat Harrison Waterway District from the district at large. No more than one (1) appointment may be made by the Governor from any one (1) county in the district. All initial appointments made pursuant to this paragraph shall be made no later than February 1, 1996, and no person appointed under this paragraph shall be an elected official or a county employee. All appointments made pursuant to this paragraph shall be for terms of four (4) years each or until a successor is appointed and qualifies.

(c) From and after January 9, 1996, the board of supervisors of each county in the Pat Harrison Waterway District shall have an appointment to the board of directors of the district as follows: the boards of supervisors of the counties of Clarke, Covington and Forrest shall each appoint a member from their respective counties for an initial term of one (1) year; the boards of supervisors of the counties of George, Greene, Jackson and Jasper shall each appoint a member from their respective counties for an initial term of two (2) years; the boards of supervisors of the counties of Jones, Lamar, Lauderdale and Newton shall each appoint a member from their respective counties for an initial term of three (3) years; and the boards of supervisors of the counties of Perry, Smith, Stone and Wayne shall each appoint a member from their respective counties for an initial term of four (4) years. All initial appointments made pursuant to this paragraph shall be made no later than February 1, 1996, and no person appointed under this paragraph shall be an elected official or a county employee. All appointments made pursuant to this paragraph after the initial appointments shall be for terms of four (4) years each or until a successor is appointed and qualifies.

(d) The directors appointed pursuant to paragraphs (b) and (c) of this subsection shall not discontinue any litigation pending on January 9, 1996, with respect to monetary payments owed to the district by any member county, and such directors shall pursue such litigation to a conclusion.

(2) Each director shall take and subscribe to the general oath of office required by Section 268 of the Constitution of the State of Mississippi before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the clerk and by him preserved.

(3) Each director shall receive a per diem in the amount established in Section 25-3-69, Mississippi Code of 1972, for attending each day's meeting of the board and for each day spent in attending to the necessary business of the district and, in addition, he may receive reimbursement for actual and necessary expenses thus incurred, upon express authorization of the board.

(4) The board of directors shall annually elect from its number a president and a vice president of the district, and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer, who may or may not be members of the board, and it may combine those offices. Except as otherwise provided for in this subsection, the treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars ($10,000.00) with sureties qualified to do business in this state, and the premium on such bonds shall be an expense of the district. The condition of each bond shall be that the treasurer or director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the district. In lieu of the bonds required by this subsection, the board may authorize that the district purchase an equivalent amount of errors and omissions insurance for the treasurer and directors.

(5) Each director shall meet with the board of supervisors of the county from which he is appointed at least twice a year at reasonable times established by the board of supervisors.

SOURCES: Codes, 1942, §§ 5956-171, 5956-173; Laws, 1962, ch. 222, §§ 1, 3; Laws, 1995, ch. 559, § 1; Laws, 1996, ch. 465, § 1, eff from and after passage (approved April 2, 1996).

Editor's Note — Paragraph (1)(a) of this section was repealed by its own terms, effective January 8, 1996.

§ 51-15-107. Petition for creation of district.

The Pat Harrison Waterway Commission, acting through its members who favor bringing the counties they represent into the Pat Harrison Waterway District, or other counties having Pascagoula River, Leaf River, Chickasawhay River, or Tallahala Creek tributaries shall petition the chancery court of Forrest County, Mississippi, to organize and establish the Pat Harrison Waterway District and shall set forth in the petition:

(1) The counties to be included in the Pat Harrison Waterway District. Each member of the Pat Harrison Waterway Commission, as created by virtue of Sections 51-15-1 through 51-15-9, and any county through which the Pascagoula, Leaf, and Chickasawhay Rivers and Tallahala Creek run, or other counties having tributaries to such streams or which border on said streams, may be included in the district.

(2) The necessity and desirability for the developments and construction of suitable facilities.

(3) A general description of the purposes of the contemplated works, and a general description of the plan.

The petition shall be filed with as many copies as there are parties defendant.

The board of water commissioners of the State of Mississippi shall be made a party defendant, and the chancery clerk shall furnish the board of water commissioners with a copy of the petition with attached exhibits. Each county named in the petition shall be joined as a party defendant by service of process on the president of the board of supervisors thereof, and the chancery clerk shall furnish a copy of the petition to each such president. Whenever any municipality having a population according to the most recent federal census of ten thousand (10,000) or more is included in such proposed district, such municipality shall be made a party defendant.

It shall not be necessary that any landowners in the counties to be included in said proposed district be named in the petition, or be made parties defendant. The chancellor of the chancery court of Forrest County, Mississippi, shall have jurisdiction of the entire waterway district for the purposes of this article. Such jurisdiction may be exercised by the chancellor in term time or in vacation, as provided in this article.

SOURCES: Codes, 1942, § 5956-174; Laws, 1962, ch. 222. § 4(a); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(a), eff from and after passage (approved Dec. 21, 1962).

§ 51-15-109. Proceedings after filing of petition.

The board of water commissioners shall file a written answer to the petition within thirty days after such service. After the filing of the answer of the board of water commissioners, and upon motion of the petitioners, the chancellor shall enter an order fixing the date for a hearing of the cause on the original petition, the exhibits, the answer of the board of water commissioners, and any other answers filed or other pleadings. The chancery clerk shall give notice of such hearing to all persons interested by posting notices thereof at the door of the courthouse of the county or counties in which the district is situated and in at least ten public places in said proposed district, and also by publishing said notice at least once a week for three consecutive weeks in a newspaper published in each of the counties proposed to be included in such waterway district. If there is no newspaper published in any such county, then it shall be sufficient to publish said notice in a newspaper having a general circulation in such county. Such notice shall be addressed to the property owners and qualified electors of such proposed district and all other persons interested, shall state when and in what court said petition was and is filed, shall state the counties included in such district, and shall command all such persons to appear before the chancery court, or the chancellor in vacation, at the chancery court building of Forrest County upon the date fixed by the chancellor to show cause, if any they can, why the proposed waterway district should not be organized and established as prayed for in said petition. The date for such hearing shall not be less than twenty-one days nor more than forty days after the last publication of such notice. It shall be sufficient in describing the lands to be included in the waterway district to name the counties to be included therein in the publication or notice hereinbefore mentioned.

If the court or chancellor finds that the notice or publication was not given as provided for in this article, it shall not thereby lose jurisdiction, but the court or chancellor shall order due publication or notice to be given and shall continue the hearing until such publication or notice shall be properly given; and the court or chancellor shall thereupon proceed as though publication or notice had been properly given in the first instance.

SOURCES: Codes, 1942, § 5956-175; Laws, 1962, ch. 222, § 4(b); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(b), eff from and after passage (approved Dec. 21, 1962).

§ 51-15-111. Hearing.

The chancery court of Forrest County may hear the petition at any term thereof, or the chancellor of said court may fix a time to hear such petition at any time in vacation, may determine all matters pertaining thereto, may adjourn the hearing from time to time, and may continue the case for want of sufficient notice or other good cause. And if said petition shall prove defective in any manner, the petitioners, upon motion, shall be permitted to amend the same.

Upon the day set for hearing said petition, or a day to which same may be continued by the court or chancellor, all parties interested may appear and contest the same. If, upon the hearing of such petition, it is found that such projects are feasible and practical, and if the creation of the waterway district under the terms of this article would meet a public necessity both local and statewide and would be conducive to the public welfare of the state as a whole, such court or chancellor shall so find and shall make and enter an order upon the minutes of the said chancery court stating that the said district, to be known as the Pat Harrison Waterway District, should be organized subject to all of the terms and provisions of this article.

If the chancellor finds that the proposed waterway district should not be organized, he shall dismiss the proceedings and the costs shall be paid by the Pat Harrison Waterway Commission.

SOURCES: Codes, 1942, §§ 5956-176, 5956-177; Laws, 1962, ch. 222, § 4(c, d); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(c, d), eff from and after passage (approved Dec. 21, 1962).

§ 51-15-113. Order and notice of election.

If the court or chancellor thereof finds that the proposed waterway district should be organized, a decree shall be so entered by the court which shall become final unless an election is called as hereinafter provided. A notice as provided by the decree of the court creating such district shall be published once each week for at least three consecutive weeks in at least one newspaper having general circulation or published in each county of the district as specified in such decree, stating that the decree shall become final forty-five days after its entry unless twenty per cent (20%) of the qualified electors of any county or counties shall petition the court for an election on the question of the inclusion of such county in the district. If there be no newspaper published in any such county, then it shall be sufficient to publish such notice in a newspaper having general circulation in said county and, in addition, to post a copy of such notice for at least twenty-one days next preceding the decree becoming final at three public places in such county. The first publication of such notice shall be made in each county within ten days after entry of said decree. In the event such petition is filed by twenty per cent (20%) of the qualified electors of any county, an election shall be held in such county as hereinafter provided. The election shall be held not less than twenty-one nor more than forty-five days from the final date of such order, whereby the qualified electors within such county may determine if such county shall be a part of such proposed district. The election shall be called by the board of supervisors of the county, and notice of the election shall be given by publishing a substantial copy of the order of the board of supervisors providing for the election once a week for at least three consecutive weeks, in at least one newspaper published in each county in which an election is to be held. The first publication of such notice shall be made not less than twenty-one days prior to the date fixed for such election. If no newspaper is published in any such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one days next preceding such election at three public places in such county.

SOURCES: Codes, 1942, § 5956-177; Laws, 1962, ch. 222, § 4(d); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(d), eff from and after passage (approved Dec. 21, 1962).

§ 51-15-115. Election.

Such election shall be held, as far as is practicable, in the same manner as other elections are held in counties. At such election, all qualified electors of such counties may vote and the ballots used at such election shall have printed thereon the words “FOR BEING INCLUDED IN THE PAT HARRISON WATERWAY DISTRICT” and “AGAINST BEING INCLUDED IN THE PAT HARRISON WATERWAY DISTRICT” and the voter shall vote by placing a cross (x) or check (√) mark opposite his choice on the proposition. In any particular county, should a majority of the qualified electors voting in such election in said county vote in favor of the creation of the Pat Harrison Waterway District, then that county shall become a part of the waterway district. The chancery court of Forrest County or the chancellor thereof in vacation shall thereupon enter a final order including such county in the district. In any particular county, should a majority of the qualified electors voting in such election in such county vote against being included in the Pat Harrison Waterway District, then that county shall not become a part of the waterway district and the said decree shall be modified accordingly.

SOURCES: Codes, 1942, § 5956-178; Laws, 1962, ch. 222, § 4(e); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(e), eff from and after passage (approved Dec. 21, 1962).

Cross References — General elections of officers, see MS Const. Art. 4, § 102.

§ 51-15-117. Appeals.

Any person interested in or aggrieved by the final order of the court or the chancellor, creating the waterway district or dismissing the petition or admitting a county to the district, and who was a party to the proceedings in the chancery court may prosecute an appeal therefrom within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars ($500.00) with two good and sufficient sureties, conditioned to pay all costs of the appeal in the event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk. When the transcript of the record of the case shall be filed in the office of the supreme court, the appellee having been summoned to appear and answer the appeal, ten days after service of the summons on appellee or his attorney the court shall consider such case as entitled to be heard. Any party to any proceedings in any court involving any of the provisions of this article may waive any time for filing pleadings so as to obtain an earlier hearing.

Any appeal from such order or decree of the chancery court or chancellor shall be a preference case in the supreme court and shall be tried at the earliest moment convenient with said court.

SOURCES: Codes, 1942, § 5956-179; Laws, 1962, ch. 222, § 4(f); Laws, 1962, 2d Ex. Sess., ch. 31, § 1(f), eff from and after passage (approved Dec. 21, 1962).

§ 51-15-118. Withdrawal of county from district.

From and after July 1, 1999, the board of supervisors of any county that is included in the Pat Harrison Waterway District may elect to withdraw such county from the district. The withdrawing county shall be responsible for paying its portion of any district bonds, contractual obligations, and any other indebtedness and liabilities of the district that are outstanding on the date of such county's withdrawal from the district. The withdrawing county's portion of such liabilities, obligations and indebtedness shall be determined through an independent audit conducted by a certified public accountant. The board of supervisors of the withdrawing county shall provide the sum that is required by this section either by appropriation from any available funds of the county or by levy. Such board of supervisors may borrow funds as needed to satisfy the withdrawing county's portion of the liabilities, obligations and indebtedness of the district as required herein.

SOURCES: Laws, 1995, ch. 559, § 7, eff from and after passage (approved April 6, 1995).

§ 51-15-119. Powers of district.

(1) The Pat Harrison Waterway District through its board of directors is hereby empowered:

(a) To develop in conjunction with the United States Army Corps of Engineers, United States Secretary of Agriculture, or with the head of any other federal or state agency as may be involved, plans for public works of improvement to make navigable or for the prevention of flood water damage, or the conservation, development, recreation, utilization and disposal of water, including the impoundment, diversion, flowage and distribution of waters for beneficial use as defined in Article 1 of this chapter, and in connection with the Oktibbeha River Basin project as authorized under Public Law 874, 87th Congress, October 23, 1962, and substantially in accordance with the recommendation of the Chief of Engineers in House Document 549 of the 87th Congress.

(b) To impound overflow water and the surface water of any streams in the Pat Harrison Waterway District or its tributaries within the project area, within or without the district, at the place or places and in the amount as may be approved by the Office of Land and Water Resources of the State of Mississippi, by the construction of a dam or dams, reservoir or reservoirs, work or works, plants and any other necessary or useful related facilities contemplated and described as a part of the project within and without the district, to control, store, and preserve these waters, and to use, distribute, and sell them, to construct or otherwise acquire within the project area all works, plants or other facilities necessary or useful to the project for processing the water and transporting it to cities and other facilities necessary or useful to the project for the purpose of processing the water and transporting it to cities and other facilities for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, and is hereby given the power to control open channels for water delivery purposes and water transportation.

(c) To acquire and develop any other available water necessary or useful to the project and to construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(d) To forest and reforest and to aid in the foresting and reforesting of the project area, and to prevent and aid in the prevention of soil erosion and flood within the area; to control, store and preserve within the boundaries of the project area the waters of any streams in the area, for irrigation of lands and for prevention of water pollution.

(e) To acquire by condemnation all property of any kind, real, personal or mixed, or any interest therein, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroad, telephone or telegraph companies and according to the provisions of Section 29-1-1. For the purposes of this article the right of eminent domain of the district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power and other companies or corporations and shall be sufficient to enable the acquisition of county roads, state highways or other public property in the project area, and the acquisition or relocation of this property in the project area. The cost of right-of-way purchases, rerouting and elevating all other county-maintained roads affected by construction shall be borne by the water management district, and new construction shall be of equal quality as in roads existing as of June 1, 1962. The county in which such work is done may assist in these costs if the board of supervisors desires.

The amount and character of interest in land, other property and easements to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making this determination. However,

(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area; sand and gravel shall not be considered as minerals within the meaning of this section; and

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting these products by reason of the inclusion of the lands or mineral interests within the project area, whether below or above the water line, but any activities shall be under reasonable regulations by the board of directors that will adequately protect the project; and

(iii) In drilling and developing, these persons are hereby vested with a right to have mineral interests integrated and their lands developed in the drilling unit or units that the State Oil and Gas Board shall establish after due consideration of the rights of all owners to be included in the drilling unit.

Moreover, when any site or plot of land is to be rented, leased or sold to any person, firm or corporation for the purpose of operating recreational facilities thereon for profit, the board shall, by resolution, specify the terms and conditions of the sale, rental or lease, and shall advertise for public bids thereon. When these bids are received, they shall be publicly opened by the board, and the board shall thereupon determine the highest and best bid submitted and shall immediately notify the former owner of the site or plot of the amount, terms and conditions of the highest and best bid. The former owner of the site or plot shall have the exclusive right at his option, for a period of thirty (30) days after written notice is received by the land owner of the determination of the highest and best bid by the board, to rent, lease or purchase the site or plot of land by meeting the highest and best bid and by complying with all terms and conditions of renting, leasing or sale as specified by the board. However, the board shall not in any event rent, lease or sell to any former owner more land than was taken from the former owner for the construction of the project, or one-quarter (¼) mile of shore line, whichever is lesser. If this option is not exercised by the former owner within a period of thirty (30) days, the board shall accept the highest and best bid submitted.

Any bona fide, resident householder actually living or maintaining a residence on land taken by the district by condemnation shall have the right to repurchase his former land from the board of directors for a price not exceeding the price paid for his land, plus any permanent improvements and plus the cost of condemnation.

(f) To require the necessary relocation of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of relocation. Further, the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of roads, highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities, and to convey them to the owners thereof in connection with the relocation as a part of the construction of the project. However, the directors of the district shall not close any public access road to the project existing prior to the construction of the reservoir unless the board of supervisors of the county in which the road is located agrees.

(g) To overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(h) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate all facilities of any kind within the project area necessary or convenient to the project and to the exercise of powers, rights, privileges and functions.

(i) To sue and be sued in its corporate name.

(j) To adopt, use and alter a corporate seal.

(k) To make bylaws for the management and regulation of its affairs.

(*l*) To employ engineers, attorneys, who may or may not be a director, and all necessary agents and employees to properly finance, construct, operate and maintain the projects and the plants, and to pay reasonable compensation for these services; for all services in connection with the issuance of bonds as provided in this article, the attorney's fee shall not exceed one percent (1%) of the principal amount of these bonds. For any other services, only reasonable compensation shall be paid for those services. The board shall have the right to employ a general manager or executive director, who shall, at the discretion of the board, have the power to employ and discharge employees. Without limiting the generality of the foregoing, it may employ fiscal agents or advisors in connection with its financing program and in connection with the issuance of its bonds.

(m) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges and functions conferred upon it by this article.

(n) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(o) To apply for and accept grants from the United States of America or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to these agencies for grants to construct, maintain or operate any project or projects which hereafter may be undertaken or contemplated by the district.

(p) To do all other acts or things necessary, requisite, or convenient to the exercising of the powers, rights, privileges or functions conferred upon it by this article or any other law.

(q) To make such contracts in the issuance of bonds that may be necessary to ensure the marketability thereof.

(r) To enter into contracts with municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities or commodities that the project may provide. The district is also authorized to contract with any municipality, corporation or public agency for the rental, leasing, purchase or operation of the water production, water filtration or purification, water supply and distributing facilities of the municipality, corporation or public agency upon consideration as the district and entity may agree. Any contract may be upon any terms and for any time as the parties may agree, and it may provide that it shall continue in effect until bonds specified therein and refunding bonds issued in lieu of these bonds and all obligations are paid. Any contract with any political subdivision shall be binding upon the political subdivisions according to its terms, and the municipalities or other political subdivisions shall have the power to enter into these contracts as in the discretion of the governing authorities thereof would be to the best interest of the people of the municipality or other political subdivisions. These contracts may include within the discretion of the governing authorities a pledge of the full faith and credit of the political subdivisions for the performance thereof.

(s) To fix and collect charges and rates for any services, facilities or commodities furnished by it in connection with the project, and to impose penalties for failure to pay these charges and rates when due.

(t) To operate and maintain within the project area, with the consent of the governing body of any city or town located within the district, any works, plants or facilities of any city deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell or otherwise lawfully dispose of property of any kind, real, personal or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, the board shall advertise the lands for sale to the highest and best bidder for cash, and shall receive and publicly open the bids thereon. The board shall, by resolution, determine the highest and best bid submitted for the land and shall thereupon notify the former owner, his/her heirs or devisees, by registered mail of the land to be sold and the highest and best bid received therefor, and the former owner, or his/her heirs or devisees, shall have the exclusive right at his/her or their option for a period of thirty (30) days in which to meet such highest and best bid and to purchase such property.

(w) To prevent or aid in the prevention of damage to person or property from the waters of the Pascagoula River or any of its tributaries.

(x) To acquire by purchase, lease, gift or in any other manner (otherwise than by condemnation) and to maintain, use and operate all property of any kind, real, personal or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges and functions conferred upon the district by this article.

(y) In the purchase of or in the entering into of all lease purchase agreements for supplies, equipment, heavy equipment and the like, the directors shall in all instances comply with the provisions of law pertaining to public purchases by public bids on these supplies and equipment.

(z) To designate employees as peace officers with the power to make arrests for violations of regulations of the district. The officers are authorized to carry weapons and to enforce the laws of the state within the confines of district parks and property. Any employee so designated is required to obtain and maintain certification pursuant to Section 45-6-1 et seq.

(aa) To contract with persons, who are certified according to the minimum standards established by the Board on Law Enforcement Officer Standards and Training under Section 45-6-1 et seq., to serve as peace officers with the power to make arrests for violations of regulations of the district. Such officers are authorized to carry weapons and to enforce the laws of the state within the confines of district parks and property. All persons with which the district has contracted under this paragraph (aa) shall be independent contractors and shall not be considered as employees under Chapter 46 of Title 11, Mississippi Code of 1972.

(bb) To: (a) receive and expend funds that are made available to it under the provisions of the federal American Recovery and Reinvestment Act of 2009 (ARRA), and/or from any other source, to construct a lake and related structures and facilities in George County, Mississippi, if the funds received by the district may be used for that purpose; (b) obtain any information and research regarding construction of the lake and related structures and facilities from the Department of Wildlife, Fisheries and Parks; and (c) to receive and expend any funds made available to the district from the Department of Wildlife, Fisheries and Parks for the construction of the lake and related structures and facilities.

(2) The board of directors shall annually prepare a five-year plan containing a prioritized list detailing the purposes, goals and projected costs of projects which it intends to implement or is in the process of implementing and shall file such plans with the clerk of the board of supervisors of each member county on or before July 15 of each year.

(3) The board of directors shall, after completion of the annual audit of the district and upon receipt of the written report thereon, file a copy of such audit with the clerk of the board of supervisors of each member county.

SOURCES: Codes, 1942, § 5956-180; Laws, 1962, ch. 222, § 5; Laws, 1962, 2d Ex. Sess., ch. 31, § 2; Laws, 1993, ch. 615, § 10; Laws, 1995, ch. 559, § 2; Laws, 2002, ch. 515, § 1; Laws, 2010, ch. 553, § 1, eff from and after passage (approved Apr. 28, 2010.)

Cross References — Apportionment of taxes collected in counties lying in two or more districts, see § 51-7-71.

Federal Aspects — American Recovery and Reinvestment Act of 2009, 111 P.L. 5, 123 Stat. 115.

ATTORNEY GENERAL OPINIONS

A waterway district has the authority to allow individual landowners to build piers and boathouses out into a lake; however, the procedure of granting permits or licenses to build such piers and boathouses is a matter within the discretion of the board of directors of the district pursuant to its regulatory power and the scope of any answer thereto was too broad to address by official opinion. Matthews, Dec. 3, 1999, A.G. Op. #99-0633.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state relocation assistance laws. 49 A.L.R.4th 491.

§ 51-15-120. Repealed.

Repealed by Laws 1992, ch. 491, § 35, eff from and after October 1, 1993.

[Laws, 1973, ch. 375, § 1; Repealed, Laws, 1984, ch. 495, § 36, and Laws, 1984, 1st Ex Sess, ch. 8, § 3; reenacted and amended, Laws, 1985, ch. 474, § 44; Laws, 1986, ch. 438, § 35; Laws, 1987, ch. 483, § 36; Laws, 1988, ch. 442, § 33; Laws, 1989, ch. 537, § 32; Laws, 1990, ch. 518, § 33; Laws, 1991, ch. 618, § 33]

Editor's Note — Former § 51-15-120 related to comprehensive liability insurance for the Pat Harrison Waterway District.

§ 51-15-121. Repealed.

Repealed by Laws, 2005, ch. 396, § 4, effective from and after July 1, 2005.

[Codes, 1942, § 5956-181; Laws, 1962, ch. 222, § 6, eff from and after passage (approved June 1, 1962).]

Editor's Note — Former § 51-15-121 required the Pat Harrison Waterway District to advertise for bids on any construction project where the amount of the contract exceeded $2,500.00.

§ 51-15-123. Park and recreation facilities.

The Pat Harrison Waterway District is authorized to establish or otherwise provide for public parks and recreation facilities and for the preservation of fish and wildlife, and to acquire land otherwise than by condemnation except as provided in subsection (e) of Section 51-15-119 for such purposes, within the project area.

SOURCES: Codes, 1942, § 5956-182; Laws, 1962, ch. 222, § 7; Laws, 1995, ch. 559, § 3; Laws, 1998, ch. 368, § 1; Laws, 2010, ch. 553, § 3, eff from and after passage (approved Apr. 28, 2010.)

§ 51-15-125. Rules and regulations.

(1) The board of directors of the district shall have the power to adopt and promulgate all reasonable regulations, which include establishing penalties for violation or the misuse, so as to secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district, to prevent waste of water or the unauthorized use thereof, and to regulate residence, hunting, fishing, boating, camping, and all recreational and business privileges along or around any such reservoir, any body of land, or any easement owned by the district.

(2) Such district may prescribe reasonable penalties for the breach of any regulation of the district.

SOURCES: Codes, 1942, § 5956-183; Laws, 1962, ch. 222, § 8, eff from and after passage (approved June 1, 1962).

ATTORNEY GENERAL OPINIONS

A waterway district has the authority to allow individual landowners to build piers and boathouses out into a lake; however, the procedure of granting permits or licenses to build such piers and boathouses is a matter within the discretion of the board of directors of the district pursuant to its regulatory power and the scope of any answer thereto was too broad to address by official opinion. Matthews, Dec. 3, 1999, A.G. Op. #99-0633.

§ 51-15-127. Appropriation permit.

The district is empowered to obtain through appropriate hearings an appropriation permit or permits from the board of water commissioners of the State of Mississippi.

SOURCES: Codes, 1942, § 5956-184; Laws, 1962, ch. 222, § 9, eff from and after passage (approved June 1, 1962).

§ 51-15-129. District funding.

In each county of the State of Mississippi which is a part of the Pat Harrison Waterway District, so long as funds are found to be necessary for the operation of the district by annual legislative approval of the district budget, the tax collector of such county shall pay into the depository selected by the water district for such purpose an amount to be determined as follows: each county shall pay a pro rata share (not to exceed the avails of one (1) mill through September 30, 1997, and not to exceed the avails of three-fourths (¾) mill through September 30, 2005, and not to exceed seven-eighths (⅞) mill thereafter) of the annual district budget based on the proportion that the most recent total assessed valuation of the county bears to the most recent aggregate total assessed valuation of all the counties which comprise the district; provided, however, that any county bordering on the Gulf of Mexico which by action of the board of supervisors has created and authorized a port authority and which has been paying into the port authority the avails of a two-mill levy that was established under Section 27-39-3 shall pay an amount not to exceed one-tenth (1/10) mill through September 30, 2005, and not to exceed two-tenths (2/10) mill thereafter, of the total assessed valuation of the county to the Pat Harrison Waterway District pursuant to this section and the assessed valuation of that county shall not be considered when calculating each county's pro rata share of the district's budget. Of the amount paid by counties required to pay to the district an amount not to exceed seven-eighths (7/8) mill, an amount equivalent to the avails of one-eighth (1/8) mill shall be utilized to fund flood control, water management and other similar projects as requested by counties in the district. Of the amount paid by counties required to pay to the district an amount not to exceed two-tenths (2/10) mill, an amount equivalent to the avails of one-tenth (1/10) mill shall be utilized to fund flood control, water management and other similar projects as requested by counties in the district. It shall be the duty of the Pat Harrison Waterway District Board of Directors in the month of November annually upon receipt of the total assessed valuation of the member counties, certified by the Department of Revenue, to prepare a request to the board of supervisors of member counties to levy a tax using the formula herein established not to exceed the maximum number of mills authorized by this section. Member counties shall remit their share of the district budget no later than March 1 of each year.

SOURCES: Codes, 1942, § 5956-185; Laws, 1962, ch. 222, § 10; Laws, 1962, 2d Ex. Sess., ch. 31, § 3; Laws, 2005, ch. 396, § 1; Laws, 2014, ch. 336, § 1, eff from and after July 1, 2014.

Editor's Note — Section 27-39-3 referred to in this section was repealed by Laws of 1980, ch. 505, § 24 (as amended by Laws of 1981, 1st Ex Sess, ch. 5, § 1), eff September 30, 1982.

Cross References — Details of bonds issued pursuant to this article, see § 51-15-133.

Special tax levy for payment of bonds relating to the Pat Harrison Waterway District, see § 51-15-137.

ATTORNEY GENERAL OPINIONS

Each county must pay its full 3/4 mill if its pro rata share of the Pat Harrison Waterway District's operating budget is larger than 3/4 mill. A county does not have authority to pay less. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

Any given county's payment could increase or decrease as a result of re-assessment, depending on the facts and whether that county's pro rata share of the budget exceeds or is below 3/4 of a mill. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

Jackson County must pay its full .1 mill if its pro rata share of the Pat Harrison Waterway District's operating budget is larger than .1 mill. It does not have authority to pay less. Matthews, Sept. 12, 2003, A.G. Op. 03-0489.

§ 51-15-131. Board of directors to issue bonds.

The board of directors of the district is hereby authorized and empowered to borrow money or issue bonds of the district for the purpose of paying the cost of acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified herein, including related facilities and including all financing and financial advisory charges, interest during construction, engineering, architectural, legal, and other expenses incidental to and necessary for the foregoing or for the carrying out of any power conferred by this article. The board of directors is authorized and empowered to borrow money and issue bonds at such times and in such amounts as shall be provided for by resolution of the board of directors, not to exceed the limitation prescribed in Section 51-15-135. All such bonds so issued by said district shall be secured solely by a pledge of the net revenues which may now or hereafter come to the district, and by the pledge of the avails of the ad valorem tax levy provided for in Section 51-15-129. Such bonds shall not constitute general obligations of the State of Mississippi or of the counties comprising said district, and such bonds shall not be secured by a pledge of the full faith, credit, and resources of the state or of the counties. Bonds of the district shall not be included in computing any present or future debt limit of any county in the district under any present or future law. "Revenues" as used in this article shall mean all charges, rentals, tolls, rates, gifts, grants, avails of tax levies, monies, and all other funds coming into the possession of the district by virtue of the provisions of this article, except the proceeds from the sale of bonds issued hereunder. "Net revenues" as used in this article shall mean the revenues after payments of costs and expenses of operation and maintenance of the project and related facilities.

SOURCES: Codes, 1942, § 5956-186; Laws, 1962, ch. 222, § 11; Laws, 1962, 2d Ex. Sess., ch. 31, § 4; Laws, 1964, ch. 252; Laws, 2005, ch. 396, § 2, eff from and after July 1, 2005.

Cross References — Additional powers conferred in connection with issuance of bonds, see §§ 31-21-5 and 51-15-133.

Bonds provided for in this section being negotiable instruments within meaning of Uniform Commercial Code, see § 51-15-133.

§ 51-15-133. Details of bonds; supplemental powers conferred in issuance of bonds.

All bonds provided for by Section 51-15-131 shall be negotiable instruments within the meaning of the Uniform Commercial Code of this state, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, it shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. The bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of directors. No bond shall have a longer maturity than forty (40) years, and the first maturity date thereof shall be not more than five (5) years from the date of such bonds. The denomination, form and place or places of payment of the bonds shall be fixed in the resolution of the board of directors of the district. The bonds shall be signed by the president and the secretary of the board with the seal of the district affixed thereto, but the coupons may bear only the facsimile signatures of the president and secretary. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any bond may be for a period not exceeding one (1) year.

The bonds may be called in, paid and redeemed in inverse numerical order on any interest date prior to maturity, upon not less than thirty (30) days' notice to the paying agent or agents designated in the bonds, and at such premium as may be designated in such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the net revenues of the district, including the avails of the ad valorem tax levy provided for in Section 51-15-129, and that they do not constitute general obligations of the State of Mississippi or of the counties comprising the district, and are not secured by a pledge of the full faith, credit and resources of the state or of the counties.

All the bonds as provided for herein shall be sold for not less than par value plus accrued interest at public sale in the manner provided by Section 31-19-25. No sale shall be at a price so low as to require the payment of interest on the money received therefor at more than eleven percent (11%) per annum computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond values, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This article shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1942, § 5956-187; Laws, 1962, ch. 222, § 12; Laws, 1962, 2d Ex. Sess., ch. 31, § 5; Laws, 1983, ch. 494, § 20; Laws, 1989, ch. 456, § 2; Laws, 2005, ch. 396, § 3, eff from and after July 1, 2005.

§ 51-15-135. Limitation on amount of bonds.

Bonds and other indebtedness issued or incurred pursuant to this article shall not exceed Seven Million Dollars ($7,000,000.00) in principal amount.

SOURCES: Codes, 1942, § 5956-188; Laws, 1962, ch. 222, § 13; Laws, 1989, ch. 456, § 1; Laws, 1996, ch. 465, § 3, eff from and after passage (approved April 2, 1996).

§ 51-15-136. Borrowing money or issuance of bonds after April 6, 1995.

From and after April 6, 1995, the board of directors shall not borrow money or issue bonds of the district unless sixty percent (60%) of the entire membership of the board of directors votes in favor of such action after thirty (30) days' written notice to the chancery clerks and presidents of the boards of supervisors of the member counties of the date upon which such vote will be taken. Further, the board shall not borrow money or issue bonds of the district from April 6, 1995, through February 1, 1996.

SOURCES: Laws, 1995, ch. 559, § 6, eff from and after passage (approved April 6, 1995).

§ 51-15-137. Repealed.

Repealed by Laws, 2005, ch. 396, § 5, effective from and after July 1, 2005.

[Codes, 1942, § 5956-189; Laws, 1962, ch. 222, § 14; Laws, 1962, 2d Ex. Sess., ch. 31, § 6; Laws, 1964, ch. 253; Laws, 1995, ch. 559, § 5; Laws, 1996, ch. 465, § 4, eff from and after passage (approved April 2, 1996).]

Editor's Note — Former § 51-15-137 required counties in the Pat Harrison Waterway District to pay to the district depository a sum not more than is necessary to defray the annual principal and interest due on outstanding indebtedness of the district.

§ 51-15-139. Validation of bonds.

All bonds issued pursuant to this article shall be validated as now provided by law of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972. The services of the state's bond attorney may be employed in the preparation of such bond resolutions, forms, or proceedings as may be necessary, for which he shall be paid a reasonable fee. Such validation proceedings shall be instituted in the chancery court of the county in which the principal office of the district is located, but notice of such validation proceedings shall be published at least two times in a newspaper of general circulation and published in each of the counties comprising the Pat Harrison Waterway District, the first publication of which in each case shall be made at least ten days preceding the date set for the validation.

SOURCES: Codes, 1942, § 5956-190; Laws, 1962, ch. 222, § 15, eff from and after passage (approved June 1, 1962).

§ 51-15-141. Trust agreement.

At the discretion of the board of directors of the district any bonds provided for in Section 51-15-131 may be further secured by a trust agreement between the board of directors and a corporate trustee, which may be any trust company or bank having powers of a trust company within or without the state. Any such trust agreement or any resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law. The trust agreement may contain provision for the issuance of additional bonds for any of the purposes authorized by this article which shall be secured by the revenues pledged thereunder for such bonds to the extent provided therein. The trust agreement may include provisions to the effect that if there is any default in the payment of principal or interest on any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer the properties and facilities of the district, including authority to sell or make contracts for the sale of any services, facilities, or commodities of the district or to renew such contracts, subject to the approval of the court appointing said receiver; and with power to provide for the payment of such bonds outstanding or the payment of operating expenses, and to apply the income and revenues to the payment of said bonds and interest thereon in accordance with the resolution of the board of directors authorizing the issuance of such bonds and said trust agreement. However, the fee for the services of any corporate trustee shall not exceed the normal charges for acting as paying agent plus any additional amount or amounts allowed by the court as the reasonable value of services rendered by the corporate trustee upon default in the payment of principal and interest on the bonds.

SOURCES: Codes, 1942, § 5956-191; Laws, 1962, ch. 222, § 16, eff from and after passage (approved June 1, 1962).

§ 51-15-143. Refunding bonds.

The board of directors of the district is hereby authorized to provide by resolution for the issuance of refunding bonds of the district for the purpose of refunding any bonds then outstanding and issued under authority of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such refunding bonds, the maturity, and other details thereof, and the rights, duties, and obligations of the board of trustees and of the district in respect to such bonds shall be governed by the provisions of this article, in so far as they are applicable. In no event shall such bonds mature over a period of time exceeding forty years from January 1, 1964.

SOURCES: Codes, 1942, § 5956-192; Laws, 1962, ch. 222, § 17, eff from and after passage (approved June 1, 1962).

§ 51-15-145. Bonds to be legal investments.

All bonds of the district are hereby declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, and for funds of the Mississippi Public Employees' Retirement System. Such bonds shall be eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

SOURCES: Codes, 1942, § 5956-193; Laws, 1962, ch. 222, § 18, eff from and after passage (approved June 1, 1962).

§ 51-15-147. Depository for funds of district.

(a) The board of directors shall designate one or more qualified state depositories within the district to serve as depositories for the funds of the district, and all funds of the district other than funds required by any trust agreement to be deposited, from time to time, with the trustee or any paying agent for outstanding bonds of the district, shall be deposited in such depository or depositories. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

(b) Before designating a depository or depositories, the board of directors shall issue a notice stating the time and place the board will meet for such purpose and inviting the qualified state depositories in the district to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. Such notice shall be published one (1) time in a newspaper or newspapers published in the district and specified by the board.

(c) At the time mentioned in the notice, the board shall consider the applications and the management and conditions of the depositories which offer the most favorable terms and conditions for the handling of the funds of the district, and which the board finds have proper management and are in condition to warrant handling of district funds in the manner as provided under the chapter on depositories. Membership on the board of directors of an officer or director of a depository shall not disqualify such depository from being designated as a depository.

(d) If no applications acceptable to the board are received by the time stated in the notice, the board shall designate some qualified state depository or depositories within the district upon such terms and conditions as it may find advantageous to the district. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.

SOURCES: Codes, 1942, § 5956-194; Laws, 1962, ch. 222, § 19; Laws, 1988, ch. 473, § 14, eff from and after December 1, 1988.

§ 51-15-149. Agreements relative to federal highways.

The board of directors of the Pat Harrison Waterway District is hereby authorized and empowered to negotiate and contract with the United States of

America, or any agency thereof, concerning all lands, easements, and rights of way necessary for the relocation of any federal road, highway, parkway, or for the facilities appurtenant thereto.

SOURCES: Codes, 1942, § 5956-195; Laws, 1962, ch. 222, § 20, eff from and after passage (approved June 1, 1962).

§ 51-15-151. Cooperation with other governmental agencies.

The Pat Harrison Waterway District shall have authority to act jointly with political subdivisions of the state and agencies, commissions, and instrumentalities thereof, and with the federal government and other agencies thereof in the performance of the purposes and services authorized in this article, upon such terms as may be agreed upon by the directors.

The board of directors of the district shall have the authority to negotiate and contract with the Secretary of the Army under the provisions of Public Law 653, 85th Congress, or other applicable law or regulation written pursuant thereto.

SOURCES: Codes, 1942, § 5956-196; Laws, 1962, ch. 222, § 21, eff from and after passage (approved June 1, 1962).

§ 51-15-153. Water management district law controlling.

The provisions of any other law, general, special, or local, except as provided in this article, shall not limit or restrict the powers granted by this article. The water management district herein provided for shall not be subject to regulation or control by the public service commission.

SOURCES: Codes, 1942, § 5956-197; Laws, 1962, ch. 222, § 22, eff from and after passage (approved June 1, 1962).

§ 51-15-155. District and its bonds exempt from taxation.

The accomplishment of the purposes stated in this article being for the benefit of the people of this state and for the improvement of their properties and industries, the district in carrying out the purposes of this article will be performing an essential public function and shall not be required to pay any tax or assessment on the projects and related facilities or any part thereof; and the interest on the bonds issued hereunder shall at all times be free from taxation within this state. The state hereby covenants with the holders of any bonds to be issued hereunder that the Pat Harrison Waterway District shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Codes, 1942, § 5956-198; Laws, 1962, ch. 222, § 23, eff from and after passage (approved June 1, 1962).

Cross References — Exemptions from taxation generally, see § 27-31-1 et seq.

§ 51-15-157. Preliminary expenses.

Any municipality or county which is within the territorial limits of the district may advance funds to said district to pay the preliminary expenses, including engineers' reports, organization, or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provisions of any law to the contrary, any such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing, for the purpose of making such advances. The board of directors is hereby authorized to repay any such advances from the proceeds of any bonds issued under the provisions of this article.

SOURCES: Codes, 1942, § 5956-199; Laws, 1962, ch. 222, § 24, eff from and after passage (approved June 1, 1962).

§ 51-15-158. Budget of estimated expenditures for support, maintenance and operation of district.

(1) On or before the fifteenth day of July of each year, the board of directors of the district shall prepare and file with the clerk of the board of supervisors of each member county at least two (2) copies of a budget of estimated expenditures for the support, maintenance and operation of the district for the fiscal year commencing on July 1 of the succeeding year. Such budget shall be prepared on forms prescribed and provided by the State Auditor and shall contain such information as the State Auditor may require.

(2) The board of directors of the district shall notify both the chancery clerk and the president of the board of supervisors of each member county in writing of the date and time when any legislative committee will hold any hearing or vote relating to the budget of the district or any other matter affecting the district. Such notice shall be served both within ten (10) days of the directors' learning of the date and time of any such action and not less than five (5) days prior to such scheduled action.

SOURCES: Laws, 1995, ch. 559, § 8, eff from and after passage (approved April 6, 1995).

§ 51-15-159. Overflow of school lands not to constitute waste.

It is hereby declared as a matter of legislative determination that the overflow and inundation of sixteenth section lands or in lieu lands shall not constitute legal waste of such lands. The district shall pay a reasonable rental for the use of such lands to be overflowed, and the damages thereof shall be determined by the chancery court of the county in which the land is located. Any sixteenth section lands that have been flooded shall be reforested before this project shall ever be abandoned.

SOURCES: Codes, 1942, § 5956-200; Laws, 1962, ch. 222, § 25; Laws, 1962, 2d Ex. Sess., ch. 31, § 7, eff from and after passage (approved Dec. 21, 1962).

§ 51-15-161. Savings clause.

Nothing in this article shall be construed to violate any provisions of the federal or state constitutions, and all acts done under this article shall be done in such manner as will conform thereto, whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide any alternative procedure conformable with such constitutions. If any provisions of this article shall be invalid, such fact shall not affect the creation of the district or the validity of any other provision of this article.

SOURCES: Codes, 1942, § 5956-201; Laws, 1962, ch. 222, § 26, eff from and after passage (approved June 1, 1962).

§ 51-15-163. Renewal of residential lease from district; determination of maximum annual rental; default or breach.

(1) At any time more than fifteen (15) years after the commencement date of any residential lease from the district, the leaseholder shall have the option to renew and extend the lease for a new sixty-year term by giving the district notice of his exercise of this option to renew.

(2) At any time after the first fifteen (15) years of the term of any residential lease, the then present lessee may obtain from the district a new sixty-year lease on the terms and conditions contained in the then current lease form approved for use in residential leases with the exception of rent. Rent under such sixty-year leases will be payable on the same annual payment date as rent under the lease being renewed. The maximum annual rental under the new lease will be determined by the district as follows:

(a) **Renewal of leases with fixed rental (nonescalating).** — The district will recompute the annual rental due under the lease being renewed as if the lease had contained annual rents at the fixed amount stated in the lease for the first ten-year period, escalating thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five-year period. The annual rental which would have been payable as of the renewal date will be the annual rent payable for the first ten-year period of the renewed lease. Annual rental will escalate thereafter at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years. Recomputed annual rental will be payable from and after the first day of the renewed lease term and not for the period prior to renewal.

(b) **Renewal of leases with escalating rental.** — Annual rental will remain payable in accordance with the terms of the lease being renewed with rental continuing to escalate at ten percent (10%), rounded to the nearest Five Dollars ($5.00), every five (5) years during the renewed term.

(3) The district will charge a reasonable nonrefundable fee for preparation of the renewal lease. The lessee will be responsible for obtaining the consent of any mortgage holder to the lease modification.

(4) At any time a lessee is found to be in default or in breach of the terms and conditions contained in the lease, the district shall give thirty (30) days' written notice to such lessee before terminating the lease. Such notice shall be by certified mail and shall specifically state the default or breach. If the lessee does not cure the default or breach within thirty (30) days of such notice, then the district shall give written notice to the holder of any mortgage or deed of trust on the leasehold and such holder shall thereupon have thirty (30) days to cure the default or breach before the lease is terminated.

SOURCES: Laws, 2014, ch. 423, § 1, eff from and after July 1, 2014.

§ 51-15-165. Renewal of commercial property lease from district; appraisal establishing fair market rental value required.

(1) Any holder of a lease that is not a residential lease subject to Section 51-15-163 shall have the right, exclusive of all other persons, to renew the lease at fair market rental value at any time prior to expiration of the lease.

(2) Other than the right of a lessee to renew at fair market rental value, nothing in this section is intended to limit or restrict the right of the district to negotiate terms of any lease in furtherance of any of the purposes authorized by this section and in a manner deemed favorable to the district by the board of directors.

(3)(a) Prior to entering into any lease under this section, whether a new or renewal lease, the district shall obtain at least one (1) appraisal from a competent appraiser establishing the fair market rental value of the land, exclusive of improvements made by the leaseholder or any predecessor in title, and, except as otherwise provided in paragraph (b) of this subsection, the land shall not be leased for an amount less than the fair market rental as determined by the appraiser and approved by the board. The district may require such other terms as it deems advisable. The cost of the appraisal shall be paid by the district and may be included in the costs of lease renewal to be reimbursed by the lessee.

(b) The lessee may obtain an appraisal from a certified real estate appraiser establishing the fair market rental value of the land. If the fair market rental value of the land established in such appraisal differs from the fair market rental value of the land established in the appraisal obtained by the district, the land shall not be leased for an amount less than the average of the fair market rental value established by the two (2) appraisals.

(4) For the purposes of this section, "terms" means rent, rent escalation clauses, rental adjustment periods and method of determination, term of years, permitted use, condition of improvements, removal of improvements, and compliance with district rules and regulations.

(5) In the event a lessee has not obtained a new lease pursuant to the provisions of this section, any preemptive right of the lessee to lease the property shall be extinguished upon expiration of the lease, and, at the direction of the district, the lessee shall remove all improvements and other structures on the property immediately upon termination of the lease.

SOURCES: Laws, 2014, ch. 423, § 2, eff from and after July 1, 2014.

CHAPTER 17

Big Black River Basin District

Sec.
51-17-1 through 51-17-11. Repealed.
51-17-13. Preliminary expenses.
51-17-15 and 51-17-17. Repealed.
51-17-19 through 51-17-35. Repealed.

§§ 51-17-1 through 51-17-11. Repealed.

Repealed by Laws, 1997, ch. 403, § 2, eff from and after July 1, 1997.

§ 51-17-1 through § 15-17-7. [Codes, 1942, §§ 5956-221 to 5956-224; Laws, 1964, ch. 249, §§ 1-4]

§ 51-17-9. [Codes, 1942, § 5956-225; Laws, 1964, ch. 249, § 5; Laws, 1966, ch. 271, § 1; Laws, 1970, ch. 295, § 1]

§ 51-17-11. [Codes, 1942, § 5956-226; Laws, 1964, ch. 249, § 6; Laws, 1986, ch. 400, § 38]

Editor's Note — Former §§ 51-17-1 through 51-17-7 provided for the organization of the Big Black River Basin District.

Former § 51-17-9 provided for the creation of the district.

Former § 51-17-11 provided for payments made to the districts by its member counties.

§ 51-17-13. Preliminary expenses.

Any municipality or county which is within the territorial limits of the district may advance funds to the district to pay the preliminary expenses of the district, including engineer's reports, organization, or administration expenses, on such terms of repayment as the governing body of such municipality or county shall determine. Notwithstanding the provision of any law to the contrary, any such municipality or county is authorized and empowered to borrow money for a period not to exceed one year from the date of such borrowing for the purpose of making such advances. The board of directors of the district is hereby authorized to repay any such advances from the monies of any funds possessed by the district.

SOURCES: Codes, 1942, § 5956-226; Laws, 1964, ch. 249, § 6, eff from and after passage (approved June 1, 1964).

§§ 51-17-15 and 51-17-17. Repealed.

Repealed by Laws, 1997, ch. 403, § 2, eff from and after July 1, 1997.

§ 51-17-15. [Codes, 1942, § 5956-227; Laws, 1964, ch. 249, § 7]

§ 51-17-17. [Codes, 1942, § 5956-228; Laws, 1964, ch. 249, § 8]

Editor's Note — Former § 51-17-15 outlined the powers of the district.

Former § 51-17-17 provided for additional powers of the district.

§§ 51-17-19 through 51-17-35. Repealed.

Repealed by Laws, 1997, ch. 403, § 3, eff from and after July 1, 1997.

§ 51-17-19 through § 51-17-23. [Codes, 1942, §§ 5956-229 to 5956-231; Laws, 1964, ch. 249, §§ 9-11]

§ 51-17-25. [Codes, 1942, § 5956-232; Laws, 1964, ch. 249, § 12; Laws, 1988, ch. 473, § 15]

§ 51-17-27 through § 51-17-35. [Codes, 1942, §§ 5956-233 to 5956-237; Laws, 1964, ch. 249, §§ 13-17]

Editor's Note — Former §§ 51-17-19 through 51-17-23 provided for construction contracts, parks and recreation facilities, and rules and regulations made by the board of directors of the district.

Former § 51-17-25 provided for a depository for district funds.

Former §§ 51-17-27 through 51-17-35 provided further guidelines regarding the rights and responsibilities of the district.

CHAPTER 19

West Central Mississippi Waterway Commission [Repealed]

§§ 51-19-1 through 51-19-15. Repealed.

Repealed by Laws, 1997, ch. 403, § 4, eff from and after July 1, 1997.
§ 51-19-1. [Codes, 1942, § 5956-301; Laws, 1966, ch. 281, § 1]
§ 51-19-3. [Codes, 1942, § 5956-302; Laws, 1966, ch. 281, § 2]
§ 51-19-5. [Codes, 1942, § 5956-303; Laws, 1966, ch. 281, § 3]
§ 51-19-7. [Codes, 1942, § 5956-304; Laws, 1966, ch. 281, § 4]
§ 51-19-9. [Codes, 1942, § 5956-305; Laws, 1966, ch. 281, § 5]
§ 51-19-11. [Codes, 1942, § 5956-306; Laws, 1966, ch. 281, § 6]
§ 51-19-13. [Codes, 1942, § 5956-307; Laws, 1966, ch. 281, § 7]
§ 51-19-15. [Codes, 1942, § 5956-308; Laws, 1966, ch. 281, § 8]

Editor's Note — Former §§ 51-19-1 through 51-19-15 provided for the West Central Mississippi Waterway Commission.

CHAPTER 21

Lower Mississippi River Basin Development District [Repealed]

§§ 51-21-1 through 51-21-14. Repealed.

Repealed by Laws, 1997, ch. 403, § 5, eff from and after July 1, 1997.

§ 51-21-1 through § 51-21-11. [Codes, 1942, §§ 5956-321 to 5956-326; Laws, 1966, ch. 259, §§ 1-6]

§ 51-21-13. [Codes, 1942, § 5956-327; Laws, 1966, ch. 259, § 7; Laws, 1974, ch. 518 § 1; Laws, 1993, ch. 615, § 11]

§ 51-21-14. [Laws, 1974, ch. 518 § 2]

Editor's Note — Former §§ 51-21-1 through 51-21-11 provided for the organization of the Lower Mississippi River Basin Development District.

Former § 51-21-13 provided for additional powers of the district.

Former § 51-21-14 was entitled: Issuance of bonds; levy of special tax.

§§ 51-21-15 through 51-21-31. Repealed.

Repealed by Laws, 1997, ch. 403, § 6, eff from and after July 1, 1997.

§ 51-21-15. [Codes, 1942, § 5956-328; Laws, 1966, ch. 259, § 8.]
§ 51-21-17. [Codes, 1942, § 5956-329; Laws, 1966, ch. 259, § 9.]
§ 51-21-19. [Codes, 1942, § 5956-330; Laws, 1966, ch. 259, § 10.]
§ 51-21-21. [Codes, 1942, § 5956-331; Laws, 1966, ch. 259, § 11.]
§ 51-21-23. [Codes, 1942, § 5956-332; Laws, 1966, ch. 259, § 12.]
§ 51-21-25. [Codes, 1942, § 5956-333; Laws, 1966, ch. 259, § 13.]
§ 51-21-27. [Codes, 1942, § 5956-334; Laws, 1966, ch. 259, § 14.]
§ 51-21-29. [Codes, 1942, § 5956-335; Laws, 1966, ch. 259, § 15.]
§ 51-21-31. [Codes, 1942, § 5956-336; Laws, 1966, ch. 259, § 16.]

Editor's Note — Former §§ 51-21-15 through 51-21-31 provided further guidelines regarding the rights and responsibilities of the district.

CHAPTER 23

Lower Yazoo River Basin District [Repealed]

§§ 51-23-1 through 51-23-17. Repealed.

Repealed by Laws, 1997, ch. 403, § 7, eff from and after July 1, 1997.

§ 51-23-1 through § 51-23-7. [Codes, 1942, §§ 5956-351 to 5956-354; Laws, 1966, Ex. Sess., ch. 49, §§ 1-4]

§ 51-23-9. [Codes, 1942, § 5956-355; Laws, 1966, Ex. Sess., ch. 49, § 5; Laws, 1990, 1st Ex Sess, ch. 65, § 1]

§ 51-23-11. [Codes, 1942, § 5956-356; Laws, 1966, Ex. Sess., ch. 49, § 6; Laws, 1968, ch. 268, § 1; Laws, 1990, 1st Ex Sess, ch. 65, § 2]

§ 51-23-13. [Codes, 1942, § 5956-356; Laws, 1966, Ex. Sess., ch. 49, § 6; Laws, 1968, ch. 268, § 1]

§ 51-23-15. [Codes, 1942, § 5956-357; Laws, 1966, Ex. Sess., ch. 49, § 7; Laws, 1977, ch. 437]

§ 51-23-17. [Codes, 1942, § 5956-358; Laws, 1966, Ex. Sess., ch. 49, § 8; Laws, 1993, ch. 615, § 12]

Editor's Note — Former §§ 51-23-1 through 51-23-7 provided for the organization of the Lower Yazoo River Basin District.

Former § 51-23-9 provided for the creation of the district.

Former § 51-23-11 provided for payments made to the district by its member counties.

Former § 51-23-13 provided for the district's preliminary expenses.

Former § 51-23-15 provided a delineation of the district's powers.

Former § 51-23-17 provided for additional powers of the district.

§§ 51-23-19 through 51-23-49. Repealed.

Repealed by Laws, 1997, ch. 403, § 8, eff from and after July 1, 1997.

§ 51-23-19 through § 51-23-23. [Codes, 1942, §§ 5956-359 to 5956-361; Laws, 1966, Ex. Sess., ch. 49, §§ 9-11]

§ 51-23-25. [Codes, 1942, § 5956-369; Laws, 1968, ch. 268, § 3]

§ 51-23-27. [Codes, 1942, § 5956-370; Laws, 1968, ch. 268, § 4; Laws, 1983, ch. 494, § 21]

§ 51-23-29 through § 51-23-37. [Codes, 1942, §§ 5956-371 to 5956-375; Laws, 1968, ch. 268, §§ 5-9]

§ 51-23-39. [Codes, 1942, § 5956-362; Laws, 1966, Ex. Sess., ch. 49, § 12; Laws, 1968, ch. 268, § 2; Laws, 1988, ch. 473, § 17]

§ 51-23-41 through § 51-23-49. [Codes, 1942, §§ 5956-363 to 5956-367; Laws, 1966, Ex. Sess., ch. 49, §§ 13-17]

Editor's Note — Former §§ 51-23-19 through 51-23-23 provided for construction contracts, parks and recreation facilities, and rules and regulations promulgated by the board of directors of the district.

Former § 51-23-25 was entitled: Board of directors to issue bonds and notes.

Former § 51-23-27 was entitled: Details of bonds; supplemental powers conferred in issuance of bonds.

Former §§ 51-23-29 through 51-23-37 provided for bonds and legal investments made by the district.

Former § 51-23-39 provided for a depository of funds for the district.

Former §§ 51-23-41 through 51-23-49 provided further delineation of the rights and responsibilities of the district.

CHAPTER 25

Yellow Creek Watershed Authority

Sec.	
51-25-1.	Repealed.
51-25-2.	Membership and organization of board.
51-25-3.	Repealed.
51-25-4.	Powers and duties.
51-25-5.	Repealed.
51-25-6.	Financing.
51-25-7.	Repealed.
51-25-8.	Chapter supplementary to other laws.

§ 51-25-1. Repealed.

Repealed by Laws, 1977, ch. 372, § 5, eff from and after passage (approved March 17, 1977).

[Codes, 1942, § 5956-44: Laws, 1958, ch. 198, §§ 1-4]

Editor's Note — Former § 51-25-1 related to the creation of the Yellow Creek Watershed Authority. For present provisions, see § 51-25-2.

§ 51-25-2. Membership and organization of board.

There is hereby created the Yellow Creek Watershed Authority composed of the geographic boundaries of the counties of Alcorn, Prentiss, and Tishomingo in the State of Mississippi which shall be governed by a board of directors consisting of nine (9) members. Three (3) members shall be appointed by the governor, one (1) from each of the counties in which the said watershed lies, all to be appointed for a term of four (4) years or until their successors are appointed and qualified. The board of supervisors of each of the three (3) counties involved shall appoint one (1) member. The three (3) counties involved shall appoint one (1) member. The three (3) members appointed by the supervisors shall serve staggered terms of four (4) years. The mayors of all incorporated municipalities within each of the three (3) counties shall appoint one (1) person from their county who shall be selected by a majority of the mayors. The three (3) members appointed by the mayors shall serve staggered terms of four (4) years. For the initial appointments, each board of supervisors and group of mayors shall appoint one (1) member for two (2) years, one (1) member for three (3) years, and one (1) member for four years. The initial appointment for the board of supervisors shall be as follows: Alcorn County, two (2) years, Tishomingo County, three (3) years, and Prentiss County, four (4) years. The initial appointment for the mayors shall be: Prentiss County, two (2) years, Alcorn County, three (3) years, and Tishomingo County, four (4) years. Board members shall be appointed by the appointing authorities within sixty (60) days after passage of this section. Board members shall serve without pay except for their actual traveling expenses and other necessary expenses incurred in the performance of their official duties, to be reimbursed as in the case of state employees under the provisions of general law from such funds as may be available to the authority. Upon appointment said members shall meet and organize at Iuka, Mississippi, set a regular time and place for the meetings of the authority, and secure offices and all necessary equipment therefor. A full-time executive director may be appointed by the board if the board deems the appointment advisable, and, if a director is appointed, he shall be full-time and shall serve at the pleasure of the board. The salary of a director may be paid out of such funds as may be available to the authority or from any source.

SOURCES: Laws, 1977, ch. 372, § 1, eff from and after passage (approved March 17, 1977).

§ 51-25-3. Repealed.

Repealed by Laws, 1977, ch. 372, § 5, eff from and after passage (approved March 17, 1977).

[Codes, 1942, § 5956-44; Laws, 1958, ch. 198, §§ 1-4]

Editor's Note — Former § 51-25-3 related to the powers and duties of the Yellow Creek Watershed Authority. For present provisions, see § 51-25-4.

§ 51-25-4. Powers and duties.

The Yellow Creek Watershed Authority is hereby specifically authorized and empowered to contract with and to be contracted with by the Tennessee Valley Authority and any other agency or agencies of the federal government or of any state or subdivision thereof which may be of assistance in carrying out the purposes set forth herein, and to do any and all other things necessary or desirable in effectuating a plan for the comprehensive development of the resources of the said watershed, including but not limited to such subjects as agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation, recreation, public health and education, said program of development to be carried on in cooperation with the appropriate local, state and federal agencies. All agencies of the State of Mississippi are hereby authorized, empowered, and directed to extend their cooperation and assistance to the said Yellow Creek Watershed Authority in the formulation and implementation of the said program of development.

SOURCES: Laws, 1977, ch. 372, § 2, eff from and after passage (approved March 17, 1977).

§ 51-25-5. Repealed.

Repealed by Laws, 1977, ch. 372, § 5, eff from and after passage (approved March 17, 1977).

[Codes, 1942, § 5956-44; Laws, 1958, ch. 198, §§ 1-4]

Editor's Note — Former § 51-25-5 related to the financing of the Yellow Creek Watershed Authority. For present provisions, see § 51-25-6.

§ 51-25-6. Financing.

Each of the counties in which the said Yellow Creek Watershed is located is hereby authorized and empowered to contribute any amount or amounts which the board of supervisors thereof shall deem advisable, acting in their sole discretion, to be paid from the general county fund of the respective counties.

SOURCES: Laws, 1977, ch. 372, § 3, eff from and after passage (approved March 17, 1977).

§ 51-25-7. Repealed.

Repealed by Laws, 1977, ch. 372, § 5, eff from and after passage (approved March 17, 1977).

[Codes, 1942, § 5956-44; Laws, 1958, ch. 198, §§ 1-4]

Editor's Note — Former § 51-25-7 related to the establishment, powers, and duties of the board of directors.

§ 51-25-8. Chapter supplementary to other laws.

This chapter shall be considered supplemental and additional to any and all other laws and confers sufficient authority in and of itself for the purposes set forth herein.

SOURCES: Laws, 1977, ch. 372, § 4, eff from and after passage (approved March 17, 1977).

CHAPTER 27

Tennessee-Tombigbee Waterway Compact

Sec.
51-27-1. Compact for the development of navigable waterway connecting Tennessee and Tombigbee Rivers.
51-27-3. State of Tennessee admitted into compact.
51-27-5. Commonwealth of Kentucky admitted into compact.
51-27-7. State of Florida admitted into Compact.

§ 51-27-1. Compact for the development of navigable waterway connecting Tennessee and Tombigbee Rivers.

(1) The governor, on behalf of this state, is hereby authorized to execute a compact in substantially the following form with the State of Alabama; and the legislature hereby signifies in advance its approval and ratification of such compact, which compact is as follows:

TOMBIGBEE-TENNESSEE WATERWAY DEVELOPMENT COMPACT

Article I. The purpose of this compact is to promote the development of a navigable waterway connecting the Tennessee and Tombigbee Rivers by way of the east fork of the Tombigbee River and Mackeys and Yellow Creeks so as to provide a nine-foot navigable channel from the junction of the Tombigbee and Warrior Rivers at Demopolis in the State of Alabama to the junction of Yellow Creek with the Tennessee River at Pickwick Pool in the State of Mississippi, and to establish a joint interstate authority to assist in these efforts.

Article II. This compact shall become effective immediately as to the states ratifying it whenever the States of Alabama and Mississippi have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

Article III. The states which are parties to this compact (hereinafter referred to as "party states") do hereby establish and create a joint agency which shall be known as the Tennessee-Tombigbee Waterway Development Authority (hereinafter referred to as the "authority"). The membership of such authority shall consist of the governor of each party state and five other citizens of each party state, to be appointed by the governor thereof. Each appointive member of the authority shall be a citizen of that state who is interested in the promotion and development of waterways and water transportation. The appointive members of the authority shall serve for terms of four years each. Vacancies on the authority shall be filled by appointment by the governor for the unexpired portion of the term. The members of the authority shall not be compensated, but each shall be entitled to actual expenses incurred in attending meetings, or incurred otherwise in the performance of his duties as a member of the authority. The members of the authority shall hold regular quarterly meetings and such special meetings as its business may require. They shall choose annually a chairman and vice-chairman from among their members, and the chairmanship shall rotate each year among the party states in order of their acceptance of this compact. The secretary of the authority (hereinafter provided for) shall notify each member in writing of all meetings of the authority in such a manner and under such rules and regulations as the authority may prescribe. The authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of the authority. It shall be the duty of the authority, in general, to promote, encourage, and coordinate the efforts of the party states to secure the development of the Tennessee-Tombigbee Waterway. Toward this end, the authority shall have power to hold hearings; to conduct studies and surveys of all problems, benefits, and other matters associated with the development of the Tennessee-Tombigbee Waterway, and to make reports thereon; to acquire, by gift or otherwise, and hold and dispose of such money and property as may be provided for the proper performance of their function; to cooperate with other public or private groups, whether local, state, regional, or national, having an interest in waterways development; to formulate and execute plans and policies for emphasizing the purpose of this compact before the Congress of the United States and other appropriate officers and agencies of the United States; and to exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the development of the Tennessee-Tombigbee Waterway and to carry out the purposes of this compact.

Article IV. The authority shall appoint a secretary, who shall be a person familiar with the nature, procedures, and significance of inland waterways development and the informational, educational, and publicity methods of stimulating general interest in such developments, and who shall be the compact administrator. His term of office shall be at the pleasure of the authority and he shall receive such compensation as the authority shall prescribe. He shall maintain custody of the authority's books, records, and papers, which he shall keep at the office of the authority, and he shall perform all functions and duties, and exercise all powers and authorities, that may be delegated to him by the authority.

Article V. Each party state agrees that, when authorized by its legislature, it will from time to time make available and pay over to the authority such funds as may be required for the establishment and operation of the authority. The contribution of each party state shall be in the proportion that its population bears to the total population of the states which are parties hereto, as shown by the most recent official report of the United States Bureau of the Census, or upon such other basis as may be agreed upon.

Article VI. Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any party state, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other waterway project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a party state.

Article VII. This compact shall continue in force and remain binding upon each party state until the legislature or governor of each or either state takes action to withdraw therefrom; provided that such withdrawal shall not become effective until six months after the date of the action taken by the legislature or governor. Notice of such action shall be given to the other party state or states by the secretary of state of the party state which takes such action.

(2) There is hereby granted to the governor, to the members of the authority for Mississippi, and to the compact administrator all the powers provided for in said compact and in this section. All officers of the State of Mississippi are hereby authorized and directed to do all things falling within their respective jurisdictions which are necessary or incidental to carrying out the purpose of said compact.

SOURCES: Codes, 1942, § 5956-45; Laws, 1958, ch. 366, §§ 1-4.

Cross References — Tennessee-Tombigbee Waterway bridges, see § 65-26-1 et seq.
Comparable Laws from other States — Alabama Code, §§ 33-8-1 through 33-8-4. Tennessee Code Annotated, §§ 69-9-101 through 69-9-104.

§ 51-27-3. State of Tennessee admitted into compact.

The admission of the State of Tennessee into the Tombigbee-Tennessee Waterway Development Compact is hereby approved, and the State of Tennessee shall become a party to the compact upon its execution by the governor of the State of Tennessee.

The secretary of state of Mississippi is hereby requested to transmit duly certified copies of this resolution to the governor of Alabama and to the governor of Tennessee.

SOURCES: Codes, 1942, § 5956-46; Laws, 1959, Ex. Sess., ch. 27.

Comparable Laws from other States — Tennessee Code Annotated, §§ 69-9-101 through 69-9-104.

§ 51-27-5. Commonwealth of Kentucky admitted into compact.

The admission of the Commonwealth of Kentucky into the Tennessee-Tombigbee Waterway Development Compact is hereby approved, and the Commonwealth of Kentucky shall become a party to the compact upon its execution by the governor of the commonwealth.

The secretary of state is hereby requested to transmit duly certified copies of this section to the governors of the States of Alabama, Tennessee, and the Commonwealth of Kentucky.

SOURCES: Codes, 1942, § 5956-47; Laws, 1962, ch. 221.

§ 51-27-7. State of Florida admitted into Compact.

The admission of the State of Florida into the Tennessee-Tombigbee Waterway Development Compact is hereby ratified, approved, and agreed to by the State of Mississippi, and said State of Florida shall become a party to said compact upon the execution of the same by the governor of said state.

The secretary of state is hereby authorized, empowered, and directed to transmit certified copies of this section to the governors of the States of Alabama, Tennessee, and Florida and of the Commonwealth of Kentucky.

SOURCES: Codes, 1942, § 5956-48; Laws, 1968, ch. 267, §§ 1, 2, eff from and after passage (approved June 14, 1968).

CHAPTER 29

Drainage Districts with Local Commissioners

Sec.
51-29-1. Scope of chapter.
51-29-3. Definitions.
51-29-5. Creation of drainage districts.
51-29-7. Organization of district in two or more counties.
51-29-9. Hearing on engineer's report.
51-29-11. Presentation of petitions.
51-29-13. Order establishing district.
51-29-15. Commissioners appointed; vacancies; removal; quorum.
51-29-17. Terms of office and compensation.
51-29-19. Power and duties of commissioners.
51-29-21. Content of plans.
51-29-23. Payment of costs for abandoned improvements.
51-29-25. Costs for proceedings abandoned and afterwards resumed.
51-29-27. Plans and estimates of commissioners to be filed.
51-29-29. Preparation of assessment roll.
51-29-31. Notice of assessment to landowners.
51-29-33. Approved roll to be final assessment.
51-29-35. Condemnation proceedings.
51-29-37. Employment of counsel.
51-29-39. Appraisement by commissioners as alternate method to acquire land and damage compensation.
51-29-41. Hearing of appraisement and objections.
51-29-43. Right of use during appeal.
51-29-45. Court to make order for assessments to cover cost of improvement.
51-29-47. Board of supervisors to make a tax levy.
51-29-49. Copy of levy to tax collector.
51-29-51. Collection of assessments.
51-29-53. Duties of treasurer.
51-29-55. Duties of tax collector.
51-29-57. New tax levy in case of deficiency.
51-29-59. Construction contracts.
51-29-61. Contractors to give bond.
51-29-63. Commissioners may borrow money.
51-29-65. Bonds to be registered.
51-29-67. Negotiable evidences of debt to contractor.
51-29-69. Commissioners not liable for damages.
51-29-71. Procedure to alter plans.
51-29-73. Landowners may build ditches to connect with public ditch.
51-29-75. Compensation for connecting with district drainage system.
51-29-77. Ditches outside of district.
51-29-79. Maintenance of system.
51-29-81. Taxes collected; delinquent lands; settlements.
51-29-83. Drainage taxes erroneously collected.
51-29-85. Certificates received in lieu of cash.
51-29-87. Disposition of certificate.
51-29-89. Bonds to be a lien on land.
51-29-91. Entire district revenues and realty pledged to secure bonds.
51-29-93. Error in names not to invalidate assessments.
51-29-95. Ditches may cross highways and railroads.
51-29-97. Financial statement and audit.

51-29-99. Penalty for obstructing or damaging drains.
51-29-101. Contractors may pass over private lands.
51-29-103. Procedure for districts to come under this chapter.
51-29-105. Construction of chapter.
51-29-107. Special commissioner may hear and determine cases under this chapter.
51-29-109. Expenses of chancellor to be paid by district.
51-29-111. Method to apportion benefits when land is divided into smaller units of ownership.
51-29-113. Clerk of district to certify order to tax collector.
51-29-115. Formation of subdrainage districts.
51-29-117. Manner of appeal.
51-29-119. Additional powers given to certain drainage districts.
51-29-121. Assessments to be apportioned when land lies in certain districts.
51-29-123. Certain districts may own rights of way and dispose of same.
51-29-125. Certain districts may acquire rights of way through existing districts.
51-29-127. Districts acquiring certain lands to assume obligations.
51-29-129. Law with reference to disposition of waters.
51-29-131. Enlargement of boundaries of drainage districts.
51-29-133. Notice and hearing of proposed extension.
51-29-135. Extension of district on majority petition.
51-29-137. Rights and powers of extended district.
51-29-139. Extension may include lands of other drainage districts.
51-29-141. Separate accounts kept for extended districts.
51-29-143. Provisions applicable to extended districts.
51-29-145. Consolidation of districts.
51-29-147. Petition and notice of consolidation.
51-29-149. Consolidation hearing and decree.
51-29-151. Commissioners of consolidated district.
51-29-153. Transfer of powers of former commissioners.
51-29-155. Lien of outstanding obligations not impaired by consolidation.
51-29-157. Powers and authority of consolidated district.
51-29-159. Mineral leases.
51-29-161. Reforestation procedure.
51-29-163. Hearing on reforestation petition.
51-29-165. Disposition of proceeds of reforestation release.

§ 51-29-1. Scope of chapter.

This chapter shall govern the future operation of all drainage districts heretofore organized or now in process of organization under the provisions of Chapter 195 of the Laws of 1912 and amendments thereto, and such other districts as may hereafter be organized under the provisions of this chapter, or which may elect to come within its provisions in the manner herein provided.

All of the provisions of Chapters 31 and 33 of this title which are not contained in this chapter, and which do not conflict with any of the provisions of this chapter, shall apply to any districts organized or operating hereunder.

SOURCES: Codes, 1930, §§ 4448, 4526; 1942, §§ 4674, 4752.

Cross References — Exercise of authority by drainage districts, see § 51-31-7.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

The legislature intended a consolidated drainage district to take over, repair, and improve the antiquated, deteriorated, and inadequate drainage canals of its constituent drainage districts, and to convert such canals into an integrated and efficient drainage system. Carter v. Chuquatonchee Consol. Drainage Dist., 218 So. 2d 30 (Miss. 1969).

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

Petition of drainage district commissioners for authority to borrow money to repair drainage system which did not include adjacent landowners who used canals and benefited therefrom was defective since all interested persons were not made parties. Hobbs v. Moorhead Drainage Dist., 205 Miss. 679, 39 So. 2d 307 (1949); Watson v. Beaver Dam Drainage Dist., 205 Miss. 690, 39 So. 2d 309 (1949).

This section [Code 1942, § 4752] fortifies the policy that additional assessments may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears that is absolutely necessary in order to raise funds to preserve and maintain the improvements of the district; and the mere fact that landowner was not apparently benefited from the improvement and maintenance of certain drainage canals in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

ATTORNEY GENERAL OPINIONS

Drainage district is political subdivisions of state, as well as private enterprise, and should have liability insurance coverage. Bradley Sept. 8, 1993, A.G. Op. #93-0632.

A county can perform drainage work on a ditch or creek or the banks thereof only to the extent necessary to drain water from an adjacent county road or to protect such a road, county building and other county property. Meadows, Aug. 22, 2003, A.G. Op. 03-0410.

A county does not have the authority to engage in a general program of flood control projects except as authorized in statutes setting forth specific provision for local flood control and drainage. Holmes-Hines, Aug. 22, 2003, A.G. Op. 03-0422.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:1 et seq.

§ 51-29-3. Definitions.

The words “real property”, whenever used in this chapter, shall have the same meaning as when used in the law providing for state and county revenues, and shall embrace all railroads within the district.

The word “ditch,” as used in this chapter, shall be held to include branch or lateral drains, tile drains, levees, sluiceways, water courses, floodgates, and any other construction work found necessary for the reclamation of wet and overflowed lands.

SOURCES: Codes, Hemingway's 1917, §§ 4443, 4478; 1930, §§ 4461, 4499; 1942, §§ 4687, 4725; Laws, 1912, ch. 195.

JUDICIAL DECISIONS

1. In general.

Word "ditch" includes levees. Dick v. Atchafalaya Drainage & Levee Dist., 147 Miss. 783, 113 So. 897 (1927).

§ 51-29-5. Creation of drainage districts.

When one-fourth (¼) or more of the owners of real property within a proposed drainage district shall file a petition in the chancery court of the county to establish a drainage district to embrace their property, describing generally the region which it is intended shall be embraced within the district, it shall be the duty of the chancery clerk to immediately publish a notice in a newspaper having a circulation in the proposed district for two (2) successive insertions, directed to the owners of the land to be embraced in the proposed district, giving notice of the said petition and designating a date, not less than ten (10) days after the last publication of notice, at which a hearing may be had on said petition. Upon the date designated in the notice, or upon a subsequent day to which the matter may be continued, the chancery court or the chancellor in vacation shall hear all objections, if any are offered, to the organization of said district, and unless at the hearing a majority of the landowners owning half or more of the land proposed to be included in the proposed district shall object to the organization, further proceedings shall be had as hereinafter provided; but if such a majority shall protest, the court or chancellor shall not proceed with the organization of said district. If in either event it be determined by the court or chancellor to proceed with the organization of the proposed district, the court or chancellor shall enter an order appointing as temporary commissioners three (3) landowners of the territory proposed to be drained, who shall take the oath required by Section 268 of Article 14 of the Constitution of the state and give bond in the penalty of not less than One Thousand Dollars ($1,000.00) payable to the county, and whose term of office shall expire upon the permanent organization of the district. Said temporary commissioners shall immediately organize and select a competent engineer, who shall give bond payable to the county in a sum of not less than One Thousand Dollars ($1,000.00), to be fixed by said commissioners for the faithful discharge of his duties, and who shall be liable upon such bond for negligence or incompetency causing loss to the county or district.

The engineer shall proceed forthwith to make a survey and ascertain the region which will be benefited by the proposed improvement, giving a general idea of its character and the cost of drainage, and making such suggestions as to the size of the drainage ditches and the location as he may deem advisable.

All expenses incident to the survey, legal expenses, and the cost of publication shall be paid by the county as the work progresses upon a proper showing; but all expenses incurred by the county shall be paid out of the proceeds of the first assessment levied under this chapter.

Said temporary commissioners may, by and with the consent of the court or chancellor, for the purpose of prosecuting the preliminary work, paying the expenses incident to the survey, attorney's fees, legal expenses, costs of publication, and other necessary expenses, borrow money at a rate of interest not exceeding that allowed in Section 75-17-105, and issue negotiable notes, certificates or other evidences of indebtedness therefor signed by the said three (3) temporary commissioners and payable either within or without the state to the person or persons from whom such money is borrowed, or bearer, or bearer simply, as said commissioners may elect. The said temporary commissioners may also issue to the engineer, or other persons who do the said preliminary work, negotiable evidences of debt signed by the three (3) said temporary commissioners, bearing interest at a rate not to exceed that allowed in Section 75-17-105. None of the said evidences of indebtedness so issued shall run for more than two (2) years, they shall be non-taxable, and said commissioners may pledge all assessments on the land proposed to be drained for the payment of said evidences of indebtedness. Said evidences of indebtedness may be paid off either out of any general fund of the drainage district if organized, or out of the proceeds of the first assessments levied under this chapter; but in the event the said district is not organized after said indebtedness has been incurred, then the board of supervisors may levy an acreage or an ad valorem tax against the lands embraced in said proposed drainage district in the manner hereinafter provided.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the Registered Bond Act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, Hemingway's 1917, § 4434; 1930, § 4449; 1942, § 4675; Laws, 1912, ch. 195; Laws, 1983, ch. 494, § 22; Laws, 1985, ch. 477, § 9, eff from and after passage (approved April 8, 1985).

Cross References — Transfer of funds to master water management district, see § 51-7-49.

Creation of flood and drainage control districts, see § 51-35-307.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, in general.
3. Creation and maintenance of district.
4. —Power to create.
5. Notice.
6. Assessments.
7. Power of district and its officers.

8. Appeals.

1. Validity.

Law of 1912, ch. 195, a former drainage statute, was not invalid as a delegation of legislative authority. Board of Supvrs. v. Grable, 111 Miss. 893, 72 So. 777 (1916).

Law of 1912, ch. 195, a former drainage law, was not invalid because not requiring personal notice to be given to landowners. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

Such drainage law was not invalid as delegating to the board of supervisors legislative power. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

The drainage law was not invalid as taking property without due process of law. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

The drainage law was not invalid as a private law. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

Const. 1890, § 112, providing that taxation shall be uniform and equal throughout the state, has no application to local assessments. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

Drainage laws are not subject to objection on the ground that all the persons in the county are not taxed. Cox v. Wallace, 100 Miss. 525, 56 So. 461 (1911).

2. Construction and application, in general.

Under statutory procedures for creation of drainage districts, amendments of pleadings are allowed liberally in order to prevent delay and injustice. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

The purpose of the statutory procedure for creation of drainage districts is to obtain the opinions and votes of the majority of those affected, either in number or land ownership. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

An insolvent drainage district is not subject to having its affairs administered and wound up by the federal district court under the 1937 amendment to the Bankruptcy Act providing for the composition of indebtedness of drainage districts, in the absence of consent by the state that the district's affairs may be so administered, which consent has not been granted by any act of the legislature. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Drainage districts are governmental agencies as well as private enterprises. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Drainage districts are organized and conducted, not alone for the purpose of reclamation of wet and overflowed lands in order to promote agriculture, but, in addition, to conserve the public health. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Drainage districts are political subdivisions of the state by which they are created. Standard Oil Co. v. National Sur. Co., 143 Miss. 841, 107 So. 559 (1926); Mississippi State Hwy. Comm'n v. Yellow Creek Drainage Dist., 181 Miss. 651, 180 So. 749 (1938); Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

A drainage district is a creature of the legislature, and the district does not necessarily have the same rights to the use of natural water courses as drains that riparian owners would have. Northern Drainage Dist. v. Bolivar County, 111 Miss. 250, 71 So. 380 (1916).

Law of 1912, ch. 195, a former drainage law, did not authorize the taking of private property for public use without due compensation. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

3. Creation and maintenance of district.

Laws 1912, ch. 195, as amended, held to provide a complete alternative plan for organization of district. Armistead v. Southworth, 139 Miss. 723, 104 So. 94 (1925).

Where a mass meeting of citizens decided to create a drainage district under this law and selected attorneys to draw necessary papers, etc., to secure such district and they prepare the papers and represent the petitioners and the district is created, the services of the attorneys are used and accepted, and they are entitled to a reasonable fee even though there was no express contract. Jones Bayou Drainage Dist. v. Sillers, Clark & Sillers, 129 Miss. 13, 91 So. 693 (1922).

Proceedings for the establishment and maintenance of a drainage district are judicial and constitute a "pending suit." Box v. Straight Bayou Drainage Dist., 121 Miss. 850, 84 So. 3 (1920).

The chancery court obtaining jurisdiction of a drainage district does not lose its jurisdiction because the land embraced in the drainage district is subsequently placed in another county. Box v. Straight Bayou Drainage Dist., 121 Miss. 850, 84 So. 3 (1920).

Creation of a drainage district and the incurring of the financial obligations resulting therefrom are to be determined by the landowners. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

Since Laws 1912, ch. 195, gave counties no voice in the appointment of engineers, an appointment on petition signed by attorneys for petitioners for the organization of the district was valid against collateral attack by a county. Board of Supvrs. v. Grable, 111 Miss. 893, 72 So. 777 (1916).

4. —Power to create.

However, chancery court is not without jurisdiction to establish a drainage district because proceedings had originally been instituted in the court of another county. Equen v. Arterbury, 121 Miss. 76, 83 So. 406 (1920).

It is the province of the legislature to provide for the establishment of drainage districts, and the authority, as well as the procedure, for the creation of drainage districts is governed by statute. Equen v. Arterbury, 121 Miss. 76, 83 So. 406 (1920).

For the purpose of increasing land values and promoting health the legislature has power to provide for creation of necessary drainage districts and require counties expected to be benefited to pay at least the preliminary expense, regardless of reimbursement. Board of Supvrs. v. Grable, 111 Miss. 893, 72 So. 777 (1916).

Chancery court has no jurisdiction to create a district which contains land situated only in one county except the banks and lands under a lake and bayou situated in another county. Low v. Black Bayou Drainage Dist., 107 Miss. 583, 65 So. 643 (1914).

5. Notice.

That notice of hearing on petition for creation of a drainage district assumed, as was fact, that a majority of landowners had signed the petition, a thing to be judicially found, did not render void, after lapse of time to appeal, the decree organizing the district without further inquiry. Armistead v. Southworth, 139 Miss. 723, 104 So. 94 (1925).

Assessment and levy of taxes against lands to pay preliminary expenses incurred in forming a drainage district is void where landowners in the proposed district are not given notice of such assessment and levy. Russell v. Mabry, 134 Miss. 239, 99 So. 2 (1924).

Law does not contemplate that published notice to the owners of the land shall be directed to each owner by name. Wooten v. Hickahala Drainage Dist., 116 Miss. 787, 77 So. 795 (1918).

6. Assessments.

In organizing and financing new drainage districts, the theory of proportionate benefits is paramount, and actual resultant benefits are the justification for, and the limitation of, the assessments. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

Drainage assessments and taxes are charges against the land only; there is no personal liability on the part of the owner. Waits v. Black Bayou Drainage Dist., 186 Miss. 270, 185 So. 577 (1939).

Under this section [Code 1942, § 4675] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

Where a drainage district, in making an assessment of benefits to property within the district, resulting from the drainage system assessing the same land to different owners, one of whom is the real owner and the other has no title or interest in the land, equity has jurisdiction to cancel the assessment. Yazoo & Miss. V. Ry. v. Lane Bayou Drainage Dist., 141 Miss. 542, 106 So. 774 (1926).

Assessment and levy of taxes against lands to pay preliminary expenses incurred in forming a drainage district is void where landowners in the proposed district are not given notice of such assessment and levy. Russell v. Mabry, 134 Miss. 239, 99 So. 2 (1924).

A new assessment of benefits by a drainage district is authorized where the lands assessed receive benefits additional to those considered on the first assessment. White v. Lake Cormorant Drainage Dist., 130 Miss. 351, 94 So. 235 (1922).

Money to be collected from the landowners of a drainage district is a local assessment and not a tax, and may be collected without submission of a bond issue. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

The county assessor has nothing to do with the assessment of benefits for local improvements. Jones v. Belzoni Drainage Dist., 102 Miss. 796, 59 So. 921 (1912).

7. Power of district and its officers.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

Drainage district has no power to employ lobbyist to procure another division of government to perform functions for which district was created. Planters' Bank v. Yazoo-Coldwater Drainage Dist., 156 Miss. 297, 126 So. 9 (1930).

Drainage district officers could not delegate their duties to levee board, where not expressly authorized to do so. Planters' Bank v. Yazoo-Coldwater Drainage Dist., 156 Miss. 297, 126 So. 9 (1930).

Note executed by drainage district for plaintiff's services in attempting to have levee board perform drainage district's functions held without consideration. Planters' Bank v. Yazoo-Coldwater Drainage Dist., 156 Miss. 297, 126 So. 9 (1930).

Act validating bonds, notes, etc., of drainage districts, etc., could not extend power of drainage district to do that which was clearly outside its authority. Planters' Bank v. Yazoo-Coldwater Drainage Dist., 156 Miss. 297, 126 So. 9 (1930).

Drainage commissioners cannot construct canal or lateral over route constituting total departure from route authorized by chancery court's decree, and not a mere deviation made necessary by difficulties of construction, without approval of change in route by such court. McCreight v. Central Drainage Dist., 137 Miss. 319, 102 So. 276 (1924).

8. Appeals.

The rights of appeal provided are exclusive of all other rights generally given by other statutes. Sabougla Creek Drainage Dist. No. 2 v. Provine, 930 Miss. 761, 94 So. 889 (1923), overruled on other grounds, Vascoe v. Ford, 212 Miss. 370, 54 So. 2d 541 (1951).

No appeal lies from an order of the chancellor remanding a proceeding to the commissioners of the district to appraise the damages for lands taken and damaged by construction of improvements. Sabougla Creek Drainage Dist. No. 2 v. Provine, 930 Miss. 761, 94 So. 889 (1923), overruled on other grounds, Vascoe v. Ford, 212 Miss. 370, 54 So. 2d 541 (1951).

No appeal can be taken from the orders and decrees made in the process of the creation of a drainage district. Clark v. Strong, 120 Miss. 95, 81 So. 643 (1919).

RESEARCH REFERENCES

ALR. Cotenancy as factor in determining representation of property owners in petition for, or remonstrance against, public improvement. 3 A.L.R.2d 127.

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 17-19.

70C Am. Jur. 2d, Special or Local Assessments §§ 69, 73, 98.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 1 et seq., 21, 51 et seq. (establishment of drain, drainage, or sewer districts).

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:11-92:24 (creation of districts).

CJS. 28 C.J.S., Drains §§ 3, 35-37 et seq.

§ 51-29-7. Organization of district in two or more counties.

If land in more than one county is embraced in the proposed district, the application shall be addressed to the chancery court of any county of such district, and all proceedings shall be had in such chancery court. The chancery court, or the chancellor in vacation shall apportion all costs between the county or counties in proportion to the benefit assessed in each county, and such expenses as were incurred prior to the time when such assessment was made shall be apportioned between the counties in the proportion which the chancery court, or the chancellor in vacation, shall deem to be just and equitable. All notices, in that event, shall be published in newspapers having a bona fide circulation in each county in which the district embraces land. All such districts shall be numbered consecutively or else shall receive names selected by the chancery court or the chancellor in vacation.

SOURCES: Codes, Hemingway's 1917, § 4436; 1930, § 4451; 1942, § 4677; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1922, ch. 213.

§ 51-29-9. Hearing on engineer's report.

As soon as the engineer has completed his survey of the proposed drainage district, he shall make a report thereof to the said temporary commissioners, who shall file the same with the clerk of the chancery court. Upon the filing of the report of said engineer, the chancery court, or the chancellor in vacation, shall enter an order directing the clerk of the chancery court to give notice by publication for two weeks by two insertions in some newspaper published and having a general circulation in the county or counties in which the lands of the proposed district lie, calling upon all persons owning property within said district to appear before the chancery court, or chancellor in vacation, on the date and at the time and place fixed by said order, which date shall not be earlier than twenty days and not later than forty days after the first publication, to show cause in favor of or against the establishment of the district.

At the time named in said notice, the court or chancellor in vacation shall hear all property owners within the proposed drainage district who wish to appear and advocate or resist the establishment of the said district. Any petition of proponents or objectors, advocating or resisting the establishment of said district, shall be filed with the clerk of said court prior to the time designated for said hearing. If the court or chancellor in vacation deems it to the best interest of the owners of the real property within the said district that same shall become a drainage district under the terms of this chapter, he shall make an order establishing same as a drainage district, subject to all the terms and provisions of this chapter. Upon the organization of said drainage district, it shall, in its corporate name by its commissioners, henceforth have power to contract and be contracted with, to sue and be sued, to plead and be impleaded, and to do and perform in the name of such district all such acts and things for the accomplishment of the purpose for which it was organized.

SOURCES: Codes, Hemingway's 1917, §§ 4435, 4436; 1930, § 4450; 1942, § 4676; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1922, ch. 213.

JUDICIAL DECISIONS

1. In general.

The signer of a petition for creation of a drainage district may make a second change of mind and withdraw his withdrawal after the time set in the clerk's published notice for filing of proponents' and contestants' petitions, but before the end of that day and the hearing. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

The provisions of this section [Code 1942, § 4676] that the hearing of the engineer's report must be upon a day to be fixed by the chancery clerk and that at a time named in the second notice the chancellor will hear property owners, and provisions of Code 1942, § 4678, which state that if petition is presented in adequate form, the chancellor will establish a district provided, however, that if upon that day the stated number of objectors file petitions the district shall not be established, do not preclude the filing of proponents' or objectors' petitions at any time during the day set for the beginning of the hearing and the word dates or day and the word hearing in Code 1942, § 4678 means at least a full day of twenty-four hours in determining when a petition can be filed. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

Although a drainage district has no express power to make a contract with an engineer for a survey in preparation to engaging in a reclamation project, it has the implied power to do so. Moorhead Drainage Dist. v. Pedigo, 210 Miss. 284, 49 So. 2d 378 (1950).

A drainage district is a separate, distinct legal entity, with power to sue and be sued as such in its corporate name, and is not excepted from the necessity of giving bond for appeal to the supreme court. Sabougla Drainage Dist. No. 2 v. People's Bank & Trust Co., 191 Miss. 331, 1 So. 2d 219 (1941).

§ 51-29-11. Presentation of petitions.

If upon the hearing provided for in Sections 51-29-5 through 51-29-9 a petition is presented to the chancery court, or the chancellor in vacation, signed by a majority of the landholders owning one third of the land, or by one third of the landholders owning a majority of the land, praying that the improvements be made, it shall be the duty of the court or chancellor to make the order establishing the district without further inquiry, if it appear that the establishment thereof be necessary for the promotion of public health and for agricultural purposes. However, if upon that day a petition signed by a majority of the landowners owning one third of the land, or by one third of the landowners owning a majority of the land, be presented praying that the improvements be not made, it shall be the duty of the court or chancellor to so order; but if no such petition is filed, it shall be the duty of the court or chancellor to investigate as provided in the aforesaid sections and to establish such drainage districts as he is of the opinion the establishment thereof will be to the advantage of the owners of real property therein, and is for the public benefit. The petition provided for therein may be signed by women, whether married or single, owning land in the proposed district; guardians may sign for their wards; and trustees, executors, and administrators may sign for the estates represented by them; and if the signature of any corporation thereto is attested by the corporate seal, the same shall be sufficient evidence of the assent of the corporation to said petition.

SOURCES: Codes, Hemingway's 1917, § 4438; 1930, § 4452; 1942, § 4678; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

Equality of benefits to all lands is not essential to formation of district. Toler v. Bear Creek Drainage Dist., 141 Miss. 851, 106 So. 88 (1925).

Drainage laws are authorized under police power. Toler v. Bear Creek Drainage Dist., 141 Miss. 851, 106 So. 88 (1925).

Prior drainage rights of owners become merged in district. Toler v. Bear Creek Drainage Dist., 141 Miss. 851, 106 So. 88 (1925).

That notice assumed petition had been signed by majority of landowners did not render proceedings void. Armistead v. Southworth, 139 Miss. 723, 104 So. 94 (1925).

2. Construction and application.

The provisions of Code 1942, § 4676, that the hearing of the engineer's report must be upon a day to be fixed by the chancery clerk and that at a time named in the second notice the chancellor will hear property owners, and provisions of Code 1942, § 4678, which state that if petitions presented in adequate form, the chancellor will establish a district provided, however, that if upon that day the stated number of objectors file petitions the district shall not be established, do not preclude the filing of proponents' or objectors' petitions at any time during the day set for the beginning of the hearing and the word date or day and the word hearing in Code 1942, § 4678 means at least a full day of twenty-four hours in determining when a petition can be filed. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

The signer of a petition for the creation of a drainage district may make a second change of mind and withdraw his withdrawal after the time set in the clerk's published notice for filing of proponents' and contestants' petitions, but before the end of that day and the hearing. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 17 et seq.

CJS. 28 C.J.S., Drains §§ 3 et seq.

§ 51-29-13. Order establishing district.

The order of the chancery court, or chancellor in vacation, establishing such drainage districts shall have the force of a judgment. Any owner of real property within the district may appeal from said judgment to the supreme court within twenty days after said order has been made; but if no appeal is taken within that time, such judgment shall be deemed conclusive and binding upon all real property within the boundaries of the district, and upon the owners thereof. Any owner of property in the district proposed to be organized may, within a like time and in a like manner, appeal from any order refusing to establish such district.

SOURCES: Codes, Hemingway's 1917, § 4438; 1930, § 4453; 1942, § 4679; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

The purpose of the statutory procedure for creation of drainage districts is to obtain the opinions and votes of the majority of those affected, either in number or land ownership. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

No appeal is allowed from order appointing commissioners of drainage district. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

Order appointing commissioners should be made subsequent to order establishing drainage district. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

Only final order creating district has force of judgment. Green River Lumber Co. v. Pompey Lake Drainage Dist., 128 Miss. 691, 91 So. 393 (1922).

2. Construction and application.

Landowners of proposed drainage districts should have the right to advise the court at hearings that they have changed their opinions about the organization of a drainage district. Allison v. Camp Creek Drainage Dist., 211 Miss. 354, 51 So. 2d 743 (1951).

In proceeding by drainage district for authority to borrow money for maintenance of drainage system, chancellor has no authority, after final judgment establishing it, to release lands from district, but where lands will not be benefited by rehabilitation of drainage system because they involve abandoned drainage ditch which never functioned, such lands should be released from new assessment and levy and commissioners released from clearing out and maintaining abandoned ditch, and chancellor's release of land from district may be construed as so holding. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 24-26.

70C Am. Jur. 2d, Special or Local Assessments §§ 68 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 11, 60, 62 (order establishing district).

CJS. 28 C.J.S., Drains §§ 35-37 et seq.

§ 51-29-15. Commissioners appointed; vacancies; removal; quorum.

When the chancery court or chancellor in vacation has established such district, he shall appoint three (3) owners of real property within the district to act as commissioners; and such persons, when so appointed, and their successors in office shall constitute, and are hereby declared to be, a body politic and corporate by the name and style selected as mentioned in this chapter, by the court or chancellor. Each of these commissioners shall take the oath of office as required by Section 268, Article 14 of the Constitution of the state, and shall also swear that he will not, directly or indirectly, be interested in any contract made by the board of commissioners save and except insofar as he may be benefited as a landowner, in common with other landowners, by the work contracted for, and that he will well and truly assess all benefits resulting from said improvements, and all damages caused thereby. Any commissioner failing to take oath within thirty (30) days after his appointment and to give bond in the sum of not less than one thousand dollars ($1,000.00), to be fixed by the court or chancellor, shall be deemed to have declined to act as commissioner, and his place shall be filled by the court or chancellor. Provided, however, where revenue for a drainage district is less than one thousand dollars ($ 1,000.00) per year from taxes or other sources, the chancellor, in his discretion, may reduce the bond to any amount he may deem sufficient.

All vacancies on the board shall be filled by the chancery court, or the chancellor in vacation, of the county; but, if a majority in number of the owners of real property in the district shall petition for the appointment of particular persons as commissioners, it shall be the duty of the court or chancellor to appoint the persons so designated. In the same manner, the commissioners shall be appointed at the expiration of the term of said commissioners. A majority of the commissioners shall constitute a quorum. The chancery court, or chancellor in vacation, shall remove any member of the board of commissioners, on the petition of the majority of the owners of land in the district, who shall own a majority of the acreage therein.

SOURCES: Codes, Hemingway's 1917, §§ 4440, 4442; 1930, §§ 4454, 4457; 1942, §§ 4680, 4683; Laws, 1912, ch. 195; Laws, 1918, ch. 159; Laws, 1977, ch. 362, eff from and after passage (approved March 16, 1977).

JUDICIAL DECISIONS

1. In general.

Order appointing commissioners should be made subsequent to order establishing drainage district. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

Inclusion of order appointing commissioners in order establishing drainage district did not affect validity of order appointing commissioners. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

That appointment of commissioners appeared in order establishing drainage district did not render appointment of commissioners subject of review in supreme court on appeal. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

Eligibility of one appointed commissioner of drainage district must be determined when and if he takes oath of office in manner prescribed by law. Elmore v. Alexander, 160 Miss. 361, 134 So. 144 (1931).

Dismissal of petition by chancery court is not res judicata which will prevent favorable action on same petition by chancery court of another county. Equen v. Arterbury, 121 Miss. 76, 83 So. 406 (1920).

ATTORNEY GENERAL OPINIONS

Ownership of real property within drainage district appears to be only qualification required for one to serve as commissioner of said district. Bradley, July 3, 1991, A.G. Op. #91-0430.

Nothing prohibits individual who owns real property in two drainage districts from serving as commissioner for each district. Bradley, July 3, 1991, A.G. Op. #91-0430.

Although term "work" is not specifically defined in statute, it would appear to be any project lawfully engaged in by drainage district. McLaurin, July 30, 1993, A.G. Op. #93-0301.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 27.

CJS. 28 C.J.S., Drains §§ 18-21.

§ 51-29-17. Terms of office and compensation.

The commissioners appointed as aforesaid shall hold their offices, one (1) for two (2) years, one (1) for four (4) years, and one (1) for six (6) years, from the date of their appointment and until their successors are appointed and qualified. On the expiration of their terms of office, their successors shall be appointed in like manner for the term of six (6) years thereafter. They shall hold their meetings at any time and place in the county or counties in which any part of the district is situated, upon the call of the president.

The commissioners herein provided for shall receive per diem compensation as provided by Section 25-3-69, together with mileage as provided in Section 25-3-41 for the distance traveled from their homes to and from the place of meeting.

SOURCES: Codes, Hemingway's 1917, § 4464; Hemingway's 1921 Supp., § 4441a; 1930, §§ 4456, 4483; 1942, §§ 4682, 4709; Laws, 1912, ch. 195; Laws, 1918, ch. 159; Laws, 1960, ch. 177; Laws, 1971, ch. 334, § 2; Laws, 1981, ch. 374, § 2, eff from and after July 1, 1981.

ATTORNEY GENERAL OPINIONS

Local commissioners are authorized to charge twenty cents ($0.20) per mile for each mile "actually and necessarily traveled" for business conducted for and on behalf of Drainage District, and mileage is limited to distance traveled from their homes to and from place of meeting; local commissioners are also authorized forty dollars ($40.00) per diem. Bradley, Jan. 24, 1990, A.G. Op. #90-0033.

§ 51-29-19. Power and duties of commissioners.

The said commissioners may adopt a common seal of the drainage district and alter the same at pleasure. They may, from time to time, make such bylaws, rules, and regulations, and alter and change the same as they may deem proper, not inconsistent with this chapter and the laws of this state, for the purpose of carrying into effect the object of their incorporation. They shall elect a president from their own number and appoint such other officers, agents, and attorneys, and employ such persons as they may think necessary for the efficient management of their business, and remove them at pleasure. They may do all acts and things not inconsistent with this chapter and with the laws of the state, and proper to effect the purpose and objects of this chapter.

Upon their qualification, the board of commissioners shall prepare plans for the improvement within the district, as prayed for in the petition, and shall procure estimates from a competent engineer or engineers as to the cost thereof. For that purpose, the board of commissioners may employ such engineers and other agents as may be needful, such engineer to give bond in the sum of at least one thousand dollars ($1,000.00), payable to the drainage district and conditioned for the faithful performance of the duties required of the engineer, which bond shall be approved by the board of commissioners, or the president. Said board of commissioners may employ the services of an attorney or a firm of attorneys as may be needed in the prosecution of the work for which the drainage district is organized, may employ such other agents as may be needed, may purchase such material and supplies, and pay for such publications and printing necessary or incidental in the prosecution of the work. Said board of commissioners shall provide for reasonable compensation to the engineer or engineers, attorneys, and other agents, and for the cost of such material, supplies, publications, and printing, and the same shall be taken as a part of the costs of the improvements; or said board of commissioners may borrow money necessary to pay for the services of the engineer or engineers, attorneys, and other agents, and for the cost of such material, supplies, publications, and printing, at a rate of interest not exceeding six per cent, per annum, and may execute a note or notes or other evidences of indebtedness therefor and may renew the same as may be necessary, and the money borrowed for such purposes shall be taken as a part of the costs of the improvements.

SOURCES: Codes, Hemingway's 1917, §§ 4441, 4442; 1930, §§ 4455, 4457; 1942, §§ 4681, 4683; Laws, 1912, ch. 195; Laws, 1918, ch. 159.

Cross References — Transfer of funds to master water management district, see § 51-7-49.

JUDICIAL DECISIONS

1. In general.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

Although a drainage district has no power to make a contract with an engineer for a survey in preparation to engaging in a reclamation project, it has the implied power to do so. Moorhead Drainage Dist. v. Pedigo, 210 Miss. 284, 49 So. 2d 378 (1950).

This section [Code 1942, § 4683] does not authorize drainage commissioners to borrow money to pay preliminary expenses incurred with respect to a new proposed program of improvements which was abandoned without the assessment of any additional benefits, the original plan of improvements having been completed and the assessment of benefits therefor having been completely exhausted. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 28.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:81 (contract between city and consulting engineer for preparation of preliminary report concerning proposed sewage disposal plant).

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-29-21. Content of plans.

Such plans and specifications shall show not merely the location, width, and depth of the ditches, but also the work to be done in removing obstructions from water courses, the building of pumping stations, dams, flumes, floodgates, fences to protect the district, and such levees as may be necessary to protect the land from overflow. Whenever federal financial or other assistance is furnished in connection with the planning or construction of the proposed improvements, such plans and specifications shall be detailed only to the extent required by the federal department or agency responsible for furnishing such assistance.

SOURCES: Codes, Hemingway's 1921 Supp., § 4442b; 1930, § 4458; 1942, § 4684; Laws, 1918, ch. 159; Laws, 1960, ch. 201, § 1.

JUDICIAL DECISIONS

1. In general.

Before contract can be made by drainage district to repair its system, and before bonds should be authorized, there must be plans and specifications to define and delineate the work to be done and to demonstrate that the proposed bond issue is adequate. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

In proceeding to authorize drainage district to borrow money to repair its system, it was error to strike so-called plans and specifications prepared for commission by their engineer, styled by him as a preliminary report, but not reversible error, as it could not be treated as substitute for plans and specifications contemplated by law and required by correct business usage. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 31 et seq.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:91 (reservation of right to change plans).

CJS. 28 C.J.S., Drains §§ 71 et seq.

§ 51-29-23. Payment of costs for abandoned improvements.

If for any cause the improvements shall not be made, said costs shall be charged on the real property in the district, including railroads, if any, and shall be raised and paid by assessments in the manner hereinafter described; or, in the event said assessments are not made, or the improvements shall not be completed or the same be abandoned, for any cause, after such indebtedness is incurred, the board of supervisors of the county in which the drainage district is located shall levy an acreage tax, or an ad valorem tax, on the lands in said proposed district if the same has not been organized, or on the lands of the district if the same has been organized, the total collections from which shall be sufficient to pay such indebtedness. The board of supervisors may levy a sufficient tax in one year or may levy a succession of acreage taxes, or ad valorem taxes, over a period of years, not to exceed three years, to be determined by said board of supervisors. If an ad valorem tax be levied, the board of supervisors may use for that purpose the assessments of the land of the last assessment roll of the county in which said lands are situated. In case the lands in the proposed district lie in more than one county, then the chancellor aforesaid shall apportion said indebtedness between the several counties, and the boards of supervisors of the several counties shall thereupon levy such apportioned tax upon the lands of their counties respectively, according to the ruling of the said chancellor.

SOURCES: Codes, Hemingway's 1921 Supp. § 4442a; 1930, § 4549; 1942, § 4685; Laws, 1918, ch. 159; Laws, 1966, ch. 229, § 1, eff from and after passage (approved June 8, 1966).

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

Levies for the cost of an uncompleted drainage district under this statute take precedence over the liens of existing mortgages. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

Judgment against drainage district for amount due for plans and specifications for abandoned improvements held not void because landowners were not made parties. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 165 Miss. 582, 138 So. 558 (1931), appeal dismissed, 287 U.S. 563, 53 S. Ct. 6, 77 L. Ed. 497 (1932).

Decision of supervisors or of chancellor regarding which method of taxation should be adopted to pay preliminary expenses incurred by drainage district abandoning improvements is not reviewable. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 165 Miss. 582, 138 So. 558 (1931), appeal dismissed, 287 U.S. 563, 53 S. Ct. 6, 77 L. Ed. 497 (1932).

Collection of tax to pay preliminary expenses incurred by drainage district abandoning improvements cannot be spread over period of years. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 165 Miss. 582, 138 So. 558 (1931), appeal dismissed, 287 U.S. 563, 53 S. Ct. 6, 77 L. Ed. 497 (1932).

Chancellor directing levy of tax to pay preliminary expenses of drainage district had only powers conferred by statute. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 165 Miss. 582, 138 So. 558 (1931), appeal dismissed, 287 U.S. 563, 53 S. Ct. 6, 77 L. Ed. 497 (1932).

2. Construction and application.

This section [Code 1942, § 4685] deals only with the situation created when a new district is proposed or commenced and then the project is abandoned and there is a failure to construct the proposed improvements therein. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

This section [Code 1942, § 4685] does not authorize drainage commissioners to borrow money to pay preliminary expenses incurred with respect to a new proposed program of improvements which was abandoned without the assessment of any additional benefits, the original plan of improvements having been completed and the assessment of benefits therefor having been completely exhausted. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

An additional assessment may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears "absolutely necessary in order to preserve and maintain the improvements of the district," and the mere fact that landowner was not apparently benefited from the improvement and maintenance of a certain drainage canal in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

§ 51-29-25. Costs for proceedings abandoned and afterwards resumed.

In any proceeding heretofore or hereafter had for the establishment of a ditch or drain or the doing of any other thing deemed necessary, when an engineer has been appointed and has made complete surveys and reports thereof, and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a ditch or drain or for the doing of anything toward the prosecution of said work for the reclamation of the same territory surveyed in said former proceedings, or a part thereof and the territory additional thereto, the engineer's reports, surveys, stakes, and monuments made in former proceedings, as far as practicable or so much thereof as may be applicable, and the cost thereof in said former proceedings, or such parts thereof as used, shall be paid for as a part of the subsequent proceedings in which such report, surveys, stakes, and monuments, or a part thereof, are used.

SOURCES: Codes, Hemingway's 1921 Supp., § 4442c; 1930, § 4460; 1942, § 4686; Laws, 1918, ch. 195.

§ 51-29-27. Plans and estimates of commissioners to be filed.

As soon as said board of commissioners shall have formed its plan and shall ascertain the cost of improvement, it shall file the same with the clerk of the board of supervisors. Said plans shall be accompanied by a map showing the location of all the main and lateral ditches, and shall be accompanied by specifications describing the character of the improvements to be made, the width and depth of the ditches, the probable quantity of earth to be removed, all other work to be done, and the probable cost of draining said territory. Whenever federal financial or other assistance is furnished in connection with the planning or construction of the proposed improvements, such plans and specifications shall be detailed only to the extent required by the federal department or agency responsible for furnishing such assistance.

SOURCES: Codes, Hemingway's 1917, § 4444; 1930, § 4462; 1942, § 4688; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1960, ch. 201, § 2.

JUDICIAL DECISIONS

1. In general.

Landowner held to waive claim for damages, where, although commissioners did not assess him damages, he failed to propound his claim for damages and demand a jury, or take an appeal from order approving assessment rolls of benefits and damages within time allowed. Minyard v. Pelucia Drainage Dist., 133 Miss. 847, 98 So. 225 (1923).

§ 51-29-29. Preparation of assessment roll.

Said commissioners shall proceed to assess the land within the district and shall inscribe in a book the description of each tract of land, the benefit to accrue to each tract by reason of such improvement, and shall enter such assessments of benefits opposite the description, together with an estimate of what the landowner will probably have to pay on such assessment for the first year. The assessment shall embrace not merely the land, but all railroad and other improvements on lands which will be benefited by the drainage system. In preparing the description of the lands so assessed, the commissioners may use either (1) the descriptions of lands and subdivisions thereof as shown on the official United States Government surveys and plats of lands within the district; (2) the descriptions of lands and subdivisions thereof as shown upon any plat of lands within the district and recorded upon the land records of the county in which said lands are located; (3) any metes and bounds descriptions found in the latest filed conveyance of said lands and of record in the records of deeds of the county in which said lands are located, and in such case it shall be sufficient to describe said lands by stating the number of acres and the general location of the land within the section, together with the book and page numbers of said conveyance. They shall place opposite each tract of land the name of the supposed owner, as shown by the last county land assessment roll; but a mistake in the name shall not vitiate the assessment. If any landowner or private corporation or any other drainage district has dug ditches or made drainage work that can be profitably used as a part of the general proposed system, the value of such ditches or drainage work to the district shall be assessed by said commissioners and shall appear upon the assessment and be paid for by the district, either in cash or by reduction of assessment. The commissioners shall also assess and place upon said roll or book of assessment, opposite each tract of land, all damages that will accrue to any landowner by reason of the proposed improvement, including all injury to lands taken or damaged; and when said commissioners return no assessment of damages as to any tract of land, it shall be deemed a finding by them that no damages will be sustained. If the commissioners, at any time either before or after the organization of the district, find that other land not embraced within the boundaries of the district will be benefited by the proposed improvement or improvements already made, they shall assess the estimated benefit to such lands and shall specially report to the chancery court, or chancellor in vacation, the assessments which they have made on land beyond the boundaries of the district, as already established. It shall thereupon be the duty of the clerk of the chancery court to give notice by two (2) weekly insertions in a newspaper published in the county where such lands lie describing the additional lands which have been assessed; and the owners of real property so assessed shall be allowed not less than ten (10) days after the last publication of such notice in which to file with the clerk of the chancery court their protest against being so assessed, or included within the district. The chancery court, or chancellor in vacation, shall, at its next succeeding session after the time for filing of such protest shall have expired, investigate the question whether the lands beyond the boundaries of the district so assessed by the commissioners will in fact be benefited by the making of the improvement, and from its finding in that regard, either the property owner or the commissioners of the district may, within twenty (20) days appeal to the supreme court. If the finding is in favor of the commissioners, the limits of the district shall be extended so as to embrace any lands that may be benefited by the making of the improvement. When their assessment is completed, the commissioners shall subscribe such assessment and deposit it with the clerk of the chancery court where it shall be kept and preserved as a public record; provided that, for the purpose of providing funds with which to clean out, restore, repair and rehabilitate the whole or any part of the drainage system of such district or for the purpose of cooperating with the United States or any agency thereof in such works, there may be imposed a uniform assessment on each acre of unsubdivided land lying within the district, and a uniform assessment by lot on subdivided land lying within the district, and the records required in this chapter shall show the amount of the assessment in lieu of the amount of benefits to accrue to each tract. Taxes levied hereunder are hereby declared to be taxes for maintenance purposes and shall not diminish in any manner the amount of assessed benefits in any such district which is otherwise available for the payment of any outstanding bonds of such district.

The assessments provided for in this section may be made even though evidences of indebtedness have been issued or validated or both prior thereto, but the lien of the holders of any such indebtedness shall not be impaired thereby.

SOURCES: Codes, Hemingway's 1917, § 4445; 1930, § 4463; 1942, § 4689; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1964, ch. 208; Laws, 1973, ch. 348, § 1; Laws, 1977, ch. 332, § 2; Laws, 1995, ch. 392, § 2, eff from and after passage (approved March 15, 1995).

JUDICIAL DECISIONS

1. In general.
2. Abandoned improvements.

1. In general.

Owner could remove timber from land within drainage district without payment of installments of assessment to become due on land subsequent to removal. Matthews v. Panola-Quitman Drainage Dist., 158 Miss. 647, 130 So. 910 (1930).

Funds derived from assessment of benefits to added territory to drainage district can be used to maintain improvements already made therein. Self v. Indian Creek Drainage Dist. No. 1, 158 Miss. 7, 128 So. 339 (1930).

Chancery court at one hearing had authority to determine whether lands should be included in drainage district and also question of assessment of benefits. Self v. Indian Creek Drainage Dist. No. 1, 158 Miss. 7, 128 So. 339 (1930).

Property within municipality lying in drainage district is subject to assessment for benefits; legislature had full control over municipal corporations, their powers and functions. Gillis v. Indian Creek Drainage Dist., 155 Miss. 160, 124 So. 262 (1929).

Declaration for damages caused by construction of levee held demurrable for failure to show authority of drainage commissioners to construct such levee. Dick v. Atchafalaya Drainage & Levee Dist., 147 Miss. 783, 113 So. 897 (1927).

Chancery court has sole jurisdiction of creation of drainage district with land in more than one county. Atchafalaya Levee & Drainage Dist. v. Nicholson, 126 Miss. 746, 89 So. 619 (1921).

Creation of drainage district and incurring of obligations thereunder are to be determined by landowners. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

Money to be collected from landowners of a drainage district is a special assessment and not a tax, and may be collected without submission of a bond issue. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

2. Abandoned improvements.

Under statute, chancery court must apportion indebtedness of drainage district where improvements are abandoned, and direct whether it shall be paid by acreage tax or ad valorem tax. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

Failure of statutes relating to taxes to pay preliminary expenses of drainage district abandoning improvements to provide for notice to landowners does not violate due-process clause as regards ad valorem taxes. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 45 et seq.

70C Am. Jur. 2d, Special or Local Assessments §§ 1 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 82-84 (assessment for drainage or sewerage).

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:51-92:63 (assessments).

CJS. 28 C.J.S., Drains §§ 103 et seq.

§ 51-29-31. Notice of assessment to landowners.

Upon the filing of such assessment, the chancery court, or the chancellor in vacation, shall enter an order directing the clerk of the chancery court to give notice by publication for two (2) weeks by two (2) insertions in some newspaper published and having a general circulation in each of the counties within which the lands of the district may lie, stating that the owners of lands assessed for drainage purposes in said district, if they desire, may appear before the chancery court, or chancellor in vacation, on the date and time and place fixed by said order, which date shall be not less than ten (10) days after the last publication of said notice, and present complaints, if any they have, against the assessment of land in the district.

The clerk of the chancery court shall publish said notice as directed by said order. The said notice shall give description of the lands assessed in as large tracts as the description will permit and shall state that said lands have been assessed for drainage purposes in said district; that any owner of real property, or the improvements thereon, within the district who conceives himself to be aggrieved by the assessment of benefits or damages or deems that the assessment of other lands in the district is inadequate shall file his written complaint or objection, in specific terms, with the clerk of said court prior to the time designated for said hearing.

SOURCES: Codes, Hemingway's 1917, § 4445; 1930, § 4463; 1942, § 4689; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1964, ch. 208; Laws, 1973, ch. 348, § 1, eff from and after passage (approved March 23, 1973).

JUDICIAL DECISIONS

1. In general.

Landowner's failure to appear pursuant to notice for construction of additional levee held not waiver of objection thereto or claim for damages. Dick v. Atchafalaya Drainage & Levee Dist., 147 Miss. 783, 113 So. 897 (1927).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 48 et seq.

70C Am. Jur. 2d, Special or Local Assessments §§ 138 et seq.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:61 (notice of assessment), 92:62 (objection to assessment), 92:63 (notice of assessment of property benefited within district), 92:34 (objection to assessment by property owners).

CJS. 28 C.J.S., Drains §§ 118-121.

§ 51-29-33. Approved roll to be final assessment.

At the time designated in said notice the court, or chancellor in vacation, shall consider said complaint or objection and enter its or his findings thereon, either confirming such assessment or increasing or diminishing the same; and its or his findings shall be final and have the force and effect of a judgment from which an appeal may be taken within twenty (20) days to the supreme court of the state either by the property owner or by the commissioners of the district.

The assessment roll so prepared and filed by the commissioners, when approved by the chancery court, or chancellor in vacation, shall stand as a final assessment of benefits and damages upon the lands of the said district and no new assessment roll shall be required unless, in the opinion of the commissioners, it becomes necessary to raise the assessment of benefits to such lands because of additional benefits to the lands other than these assessed or because it becomes absolutely necessary in order to raise funds to preserve and maintain the improvements of the district.

SOURCES: Codes, Hemingway's 1917, § 4445; 1930, § 4463; 1942, § 4689; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1964, ch. 208; Laws, 1973, ch. 348, § 1, eff from and after passage (approved March 23, 1973).

Cross References — Appeals to the Supreme Court, see § 11-51-3 et seq.

JUDICIAL DECISIONS

1. Appeals.
2. Additional assessments.

1. Appeals.

Original assessment of benefits to lands within drainage district from improvements, upon final approval and confirmation, is res judicata as to such benefits. Gillis v. Indian Creek Drainage Dist., 160 Miss. 528, 134 So. 173 (1931).

Legality of improvements by commissioners of drainage district could not be raised on appeal from decree confirming assessment against additional lands. Self v. Indian Creek Drainage Dist. No. 1, 158 Miss. 7, 128 So. 339 (1930).

Assessment of benefits and damages by drainage district was final and binding and had force and effect of judgment subject only to statutory exceptions. Gillis v. Indian Creek Drainage Dist., 155 Miss. 160, 124 So. 262 (1929).

Appeal cannot be taken from order of board removing drainage commissioners. Richardson v. Board of Supvrs., 128 Miss. 869, 91 So. 565 (1922).

Appeal from decree of chancery court making assessment must be taken within twenty days after rendition thereof. Illinois Cent. R.R. v. Yocona Drainage Dist. No. 2, 128 Miss. 636, 91 So. 392 (1922).

2. Additional assessments.

An additional assessment may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears "absolutely necessary in order to preserve and maintain the improvements of the district," and the mere fact that landowner was not apparently benefited from the improvement and maintenance of a certain drainage canal in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

Petition of drainage district commissioners for authority to repair and improve canals, borrow money and assess a tax against the benefits to the lands located in the district was defective where outside landowners receiving benefits from the drainage system were not made parties. Watson v. Beaver Dam Drainage Dist., 205 Miss. 690, 39 So. 2d 309 (1949).

Petition of drainage district commissioners for authority to borrow money to repair drainage system which did not include adjacent landowners who used canals and benefited therefrom was defective since all interested persons were not made parties. Hobbs v. Moorhead Drainage Dist., 205 Miss. 679, 39 So. 2d 307 (1949).

Neither commissioners of drainage district personally, nor the sureties on their official bonds, were liable to holders of unpaid bonds of first series issued by the district for paying bonds of the second series which were invalid because additional benefits had not been assessed against the land as a basis for the issuance of the second bonds, where the commissioners acted ministerially in good faith, since the acts of the commissioners were chargeable to the board in its official capacity rather than to the members individually; Moreover, they were not liable on the theory that the funds of the district constituted trust funds exclusively for the payment of the bonds of the first issue. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Drainage district commissioners had right to assess additional benefits against the land in the district for further improvements after full expenditure of the proceeds from the first bond issue, if in their judgment further benefits would accrue to the landowners by virtue of such further construction, or if in their judgment it had become necessary to preserve the improvements theretofore made. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Drainage commissioners cannot be required by mandamus to make such assessment of benefits as will be sufficient to pay indebtedness due contractor. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Mandamus will lie to require drainage commissioners to assemble and act in matter of making additional assessments. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Value which drainage commissioners place on benefits accruing to land in district from drainage improvements is for their determination, subject to review by court. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Contractor recovering judgment on notes of drainage district was not entitled in same proceeding to writ of mandamus, for which court substituted writ of injunction, to compel commissioners to make additional assessment. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

In additional assessment by drainage commissioners not exceeding total benefits to land would be insufficient to pay contractor's judgment on notes of district, it would, to extent of insufficiency, by unenforceable. Anderson v. Robins, 161 Miss. 604, 137 So. 476 (1931).

Benefits resulting to land within drainage district from expenditures made to preserve and maintain improvements must be proportionately assessed against all lands of district without reference to any inequality that might have existed in original assessment. Gillis v. Indian Creek Drainage Dist., 160 Miss. 528, 134 So. 173 (1931).

Subsequent assessment by drainage district must be based on benefits accruing and made against property of entire district. Gillis v. Indian Creek Drainage Dist., 155 Miss. 160, 124 So. 262 (1929).

New assessment of benefits by drainage district authorities where lands assessed receive additional benefits. White v. Lake Cormorant Drainage Dist., 130 Miss. 351, 94 So. 235 (1922).

RESEARCH REFERENCES

CJS. 28 C.J.S., Drains §§ 134-136 et seq.

§ 51-29-35. Condemnation proceedings.

Any property owner may accept the assessment of damages in his favor made by the commissioners, or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so unless he gives to said commissioners, within thirty days after the assessment is filed, notice in writing that he demands assessment of his damages by jury. In such event the commissioners shall institute in the proper court in the proper county an action to condemn the lands that must be taken or damaged in making such improvements, which action shall be in accordance with the proceeding for the condemnation of property for public use provided in the chapter on eminent domain. Where condemnation proceedings are had as herein provided and an appeal is taken to the circuit court, the drainage commissioners may pay the amount awarded by the jury into the hands of the clerk of the circuit court, who shall hold the same to abide the decision of said appeal, and the drainage commissioners may proceed with the work of constructing the drain as laid out by them.

SOURCES: Codes, Hemingway's 1917, § 4446; 1930, § 4464; 1942, § 4690; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Mineral leases, see § 51-29-159.
Powers of drainage districts, generally, see § 51-31-1.
Additional powers of drainage districts, see § 51-33-1 et seq.

Authority of drainage district to borrow money, see § 51-33-19.
Use of drains for irrigation of farm land, see § 51-33-33.

JUDICIAL DECISIONS

1. In general.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

Under statute, chancery court must apportion indebtedness of drainage district where improvements are abandoned, and direct whether it shall be paid by acreage tax or ad valorem tax. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

Failure of statutes relating to taxes to pay preliminary expenses of drainage district and abandoning improvements to provide for notice to landowners does not violate due-process clause as regards ad valorem taxes. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

Landowner held to have waived claim for damages, where, although commissioners did not assess him damages, he failed to propound his claim for damages and demand a jury, or take an appeal from order approving assessment rolls of benefits and damages within time allowed. Minyard v. Pelucia Drainage Dist., 133 Miss. 847, 98 So. 225 (1923).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 28.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:31-92:44 (acquisition of property).

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-29-37. Employment of counsel.

The drainage commissioners may employ an attorney to assist in the formation and administration of the drainage district, and to represent the district in all matters of a legal nature, at a fixed or agreed compensation, subject to the confirmation of the chancery court or chancellor in vacation, who may decrease but not increase such compensation.

SOURCES: Codes, 1930, § 4465; 1942, § 4691.

ATTORNEY GENERAL OPINIONS

Attorney's fees must be approved by Chancery Court whether attorney is on permanent retainer or is employed by drainage district only on occasion and bills an hourly fee. Clapp, August 5, 1993, A.G. Op. #93-0302.

The chancery judge or chancellor must only approve the compensation of the attorney, and is not responsible for approving a drainage district's choice of a particular attorney. Chamberlin, Sept. 17, 2004, A.G. Op. 04-0454.

Any reasonable type of billing method, including a monthly, quarterly or annual billing method would be permissible under the statute. Chamberlin, Sept. 17, 2004, A.G. Op. 04-0454.

§ 51-29-39. Appraisement by commissioners as alternate method to acquire land and damage compensation.

In lieu of the method provided in Sections 51-29-29 through 51-29-35 for acquiring land and making compensation for damages, the drainage commissioners may adopt the following method for acquiring lands and making compensation for damages, to wit:

The commissioners may, at any time after the organization of the district, appraise the value of any land taken or to be taken for the purposes of the proposed improvement, according to the plans of the district on file, and the damages resulting to the owners from such taking. The board may specify, in case of any property, the particular purpose for which and the extent to which easement is desired, and the assessment of property in such case shall represent only the damages resulting from the use so specified. They may make a complete appraisement of all such lands, taken or to be taken, at one time, or at any time make appraisements as it becomes necessary or desirable. When the commissioners have made their appraisement of lands taken, they shall certify to the same and file it with the clerk of the chancery court of the county in which the land lies. The court, or chancellor in vacation, shall enter an order designating the date, time, and place for the hearing of objections to such appraisement, either at a regular term of the court or in vacation. The clerk shall issue a summons directed to the sheriff of the county or counties of the state in which any landowner or other person interested may reside, commanding him to summon such owner or owners or interested persons to appear at the time and place named. If the owner of any land sought to be taken is an infant or person of unsound mind, the summons may be served on his guardian; and the guardian in such cases is authorized, subject to the approval of the chancellor in termtime or vacation, to sell and convey such property and dedicate it thus to the public use, or he may agree upon the damages and thereby bind the ward. If there is no guardian in such case, the chancellor in vacation may, on application of anyone in interest, appoint a guardian ad litem to represent such infant or person of unsound mind, whose acts and doings in the premises shall be valid and binding on the ward. The chancellor may require a bond of such guardian ad litem. The clerk of the court shall notify the guardian ad litem of his appointment and the amount of bond required, if any, by certified mail sent to the post office address of the guardian. If the owner of such land is a nonresident of the state or cannot be found, or if the owner is unknown, and this shall apply to any person interested, upon affidavit to that fact being made by the commissioners or by their agent or attorney, service of the summons may be delivered to any of his agents in charge of the land; or publication shall be made in the manner provided by law for publication for nonresident and unknown parties in chancery suits. If the land belongs to a deceased person whose estate is being administered, the summons may be served upon the executor or administrator, who shall, for all purposes of this chapter, be authorized to act for the owner, and shall be responsible on his bond accordingly. Such notice, when published, need only state that the hearing will be for the purpose of confirming the report of the commissioners as to the appraisement of land taken for the use of the district. The notice shall contain the names of the owners or persons interested in such land and their post office address, if known, and if unknown, that fact shall be so stated, and shall contain a list of the land, described by section numbers, belonging to such nonresident owners through which the ditches of the district are to run, or which such lands are to be taken for the uses of the district.

If any owner is not satisfied with the amount allowed by the commissioners for lands taken by reason of the construction of such proposed system according to the plans of the district, he shall file with the clerk of the court written objections, in specific terms, prior to the time designated for the hearing.

If no written objections are filed, a decree confirming the appraisement shall be rendered, and upon payment of the amount to the chancery clerk, the commissioners of the district may enter upon and take possession of the property and appropriate it to the public use of the district and the title of the property shall thereupon vest in the district. The clerk shall receipt upon the decree for the money paid, and the decree with the receipt thereon shall be recorded.

If written objections are filed prior to the time set for the hearing, the court or chancellor in vacation shall proceed to hear the objections filed, trying the cause or causes without the intervention of a jury.

No judgment by default shall be entered against an owner or person interested residing in this state unless it appears that he has been duly served with summons at least thirty (30) days before the return day, and no judgment by default shall be rendered against any nonresident or unknown person or persons interested unless proper publication has been made.

SOURCES: Codes, Hemingway's 1917, § 4447; 1930, § 4466; 1942, § 4692; Laws, 1912, ch. 195; Laws, 1914, ch. 271; Laws, 1964, ch. 210; Laws, 1999, ch. 510, § 1, eff from and after August 2, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

Cross References — Certain takings of property being excluded from the chapter on eminent domain, see § 11-27-33.

Acquisition of easements and rights of way, see § 51-7-33.

JUDICIAL DECISIONS

1. In general.
2. Constitutionality.

1. In general.

Water management district failed to follow the clear procedures outlined in Miss. Code Ann. § 51-29-39 where it did not provide notice to the life tenants or remaindermen of a piece of property on which the district wanted to acquire a permanent easement on which to construct a water-retarding structure, and where the life tenants were not made a party to the petition to require the easement. Webb v. Town Creek Master Water Mgmt. Dist., 903 So. 2d 701 (Miss. 2005), remanded by 93 So. 3d 20, 2012 Miss. LEXIS 355 (Miss. 2012).

This section does not allow a quick take of needed easements. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

While tenants in common may be required to bear their proportionate share of expenditures and disbursements and to pay off proportionately the purchase price for outstanding titles and claims, a drainage district has not the power to spend funds to meet these obligations as a tenant in common with others. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

2. Constitutionality.

It is not unconstitutional to allow payment of compensation to the clerk of the chancery court instead of directly paying the landowners. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

The statute is not unconstitutional on the basis that it violates the right to a trial by jury. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

This section is unconstitutional on its face regarding the very narrow due process issue of adequate notice to prepare for trial, since two days from the date of service of process is inadequate time to hire an appraiser and prepare for a trial on the issue of just compensation. Branaman v. Long Beach Water Mgmt. Dist., 730 So. 2d 1146 (Miss. 1999).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 34.

CJS. 28 C.J.S., Drains § 75.

§ 51-29-41. Hearing of appraisement and objections.

Proof of publication made in the manner prescribed by the Mississippi Rules of Civil Procedure shall be prima facie evidence of the facts therein recited. At the hearing the report and appraisement of the value of the land sought to be taken and the damages sustained by the owner thereof shall be prima facie correct. The court, or chancellor in vacation, may at such hearing hear all objections in entirety or severalty, and may enter a decree confirming the entire report of the commissioners, or may enter any number of decrees confirming the report as to any land taken. At such hearing the court, or chancellor in vacation, may direct the board to make such alteration in the appraisement as may be deemed just and equitable by raising or lowering any appraisement, and payment for such amount fixed by the judgment shall be made to the chancery clerk as hereinbefore provided. He shall receipt for the same on the judgment, and such judgment with receipt thereon shall be recorded.

SOURCES: Codes, Hemingway's 1917, § 4448; 1930, § 4467; 1942, § 4693; Laws, 1912, ch. 195; Laws, 1914, ch. 271; Laws, 1991, ch. 573, § 111, eff from and after July 1, 1991.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 34.
CJS. 28 C.J.S., Drains § 75.

§ 51-29-43. Right of use during appeal.

Any landowner feeling aggrieved at the decree of the chancellor shall have the right to appeal in the manner provided in this chapter. No appeal shall interfere with the right of the district to enter upon and take possession of the property sought to be taken, or hinder the district in the doing of any act necessary and proper in the construction of the proposed system and the carrying out of the purposes of its organization, provided, however, that the district shall have first paid into the court the amount of the appraisement. Drainage districts organized under the provisions of this chapter shall have the power to acquire any and all lands, lying either within or without the limits of such districts, necessary to the carrying out of the successful drainage of the district, in the manner above provided. In addition to the method above prescribed for the acquisition of lands for the purpose of the district, drainage districts shall have and are hereby given and granted the right of eminent domain, and they may proceed to acquire rights of way by proceeding under the code before the court of eminent domain.

SOURCES: Codes, Hemingway's 1917, § 4449; 1930, § 4468; 1942, § 4694; Laws, 1912, ch. 195; Laws, 1914, ch. 271.

RESEARCH REFERENCES

CJS. 28 C.J.S., Drains §§ 60-64 et seq.

§ 51-29-45. Court to make order for assessments to cover cost of improvement.

The chancery court or chancellor in vacation shall, at the same time that the assessment of benefits is filed or at any subsequent time when called upon by the board of commissioners of the district so to do, enter upon the minutes of the chancery court an order which shall have all the force of a judgment, providing that there shall be assessed upon the real property of the district a special assessment or levy to pay the estimated cost of the improvement, with not less than ten per cent added for unforeseen contingencies. The amount to be assessed upon each tract of land included within the district shall be such part of the estimated cost of the improvement as the assessment of benefits against such tract bears to the assessment of benefits against all the real property in the district. Said assessments are to be paid in annual installments, not to exceed ten per cent in any one year, as provided in such order; but if any landowner elects, he may pay the whole amount of the assessment against his land before it becomes due or at any time thereafter, or all or any part of said assessment at any time he sees fit, provided such payment is made before any bonds are issued by the district.

The assessment or assessments so levied shall be a lien on all of the real property of the district from the time that the same is levied by the chancery court or chancellor in vacation in an amount not to exceed the total amount of estimated benefits on all the real property in the district, shall be entitled to preference to all demands, executions, encumbrances, or liens whatsoever, and shall continue until such assessment, with any penalty and costs that may accrue thereon, shall have been paid. The remedy against such assessment shall be by appeal to the supreme court, and such appeal must be taken within twenty days from the time that said assessment has been made by the chancery court, or chancellor in vacation. On such appeal the presumption shall be in favor of the legality of the assessment.

SOURCES: Codes, Hemingway's 1917, § 4450; 1930, § 4469; 1942, § 4695; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Abatement of lien of land subject to special assessment, see § 29-1-97.

Assessment of lands for bonds, see § 51-29-89.

Payment of assessments, see § 51-31-53.

JUDICIAL DECISIONS

1. In general.
2. Taxes.
3. Liens.

1. In general.

Owner could remove timber from land within drainage district without payment of installments of assessment to become due on land subsequent to removal. Matthews v. Panola-Quitman Drainage Dist., 158 Miss. 647, 130 So. 910 (1930).

Property owner held to waive right to damages from cleaning out of canal by failure to assert damages upon creation of district. Belzoni Drainage Dist. v. Cobb, 137 Miss. 393, 102 So. 259 (1924).

Money to be collected from landowners of drainage district is a local assessment and not a tax. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

2. Taxes.

Under the statute, it is clear that it was not the purpose of the legislature to discharge the drainage district lands from accruing of taxes during the period it is held by the state under a tax sale. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

While the state is not required to pay the taxes accruing on the land for drainage purposes, and such taxes are held in abeyance during the time it is held by the state, yet the taxes do accrue subject to the state's superior right, and when the state parts with its title, it does not free the land from such lien until the taxes are paid in full, and proceedings may be had under the statute to collect the assessments levied during the years when the state held the title, when the taxes were in abeyance. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

Under statute, chancery court must apportion indebtedness of drainage district where improvements are abandoned, and direct whether it shall be paid by acreage tax or ad valorem tax. Bank of Commerce & Trust Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

Failure of statutes relating to taxes to pay preliminary expenses of drainage district and abandoning improvements to provide for notice to landowners does not violate due-process clause as regards ad valorem taxes. Bank of Commerce & Trust

Co. v. Commissioners of Tallahatchie Drainage Dist., 157 Miss. 336, 128 So. 91 (1930).

3. Liens.

A county, on becoming a voluntary purchaser of drainage district lands encumbered by statutory judgment lien, does not acquire these lands free of lien despite the fact that the lands are to be used for a public purpose. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Code 1942, § 9697, exempting from taxation property belonging to the state or to any county, levee board or municipal corporation thereof, was never intended to abate an existing judgment lien as fixed by final decree of the chancery court against land subsequently purchased by the state or one of its subdivisions. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 43 et seq.

CJS. 28 C.J.S., Drains §§ 106-108 et seq.

§ 51-29-47. Board of supervisors to make a tax levy.

It shall be the duty of the board of supervisors of each county to make an annual tax levy, at the same time when the county tax levy is made or at any succeeding regular meeting, in an amount not exceeding the installment of assessment levied for that year sufficient to meet the obligations of the district.

SOURCES: Codes, Hemingway's 1917, § 4451; 1930, § 4470; 1942, § 4696; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Additional tax in case of deficiency of funds, see § 51-29-57.
Levy of new taxes by commissioners, see § 51-29-79.

JUDICIAL DECISIONS

1. In general.

Where petition alleged that drainage commissioners had failed to make annual assessment as required by statute, neither board of supervisors not tax collectors were necessary parties in mandamus to compel payment of bonds. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Petition held sufficient to charge drainage commissioners had failed to make annual assessments as required by statute. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Petition in mandamus to compel payment of drainage district bonds need not show claim first presented to supervisors and disallowed, and liability on bonds reduced to judgment. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 43, 44.

CJS. 28 C.J.S., Drains §§ 114-117 et seq.

§ 51-29-49. Copy of levy to tax collector.

It shall thereupon be the duty of the clerk of the board of supervisors to extend the amount of the said levy on the original or copy of the assessment roll of the district on file in his office, and to certify a copy of the levy to the tax collector of his county, who shall extend the amount of the levy on the copy of said assessment in his office.

Any owner of real property within the district may, by mandamus, compel the compliance by the board of supervisors with the terms of Section 51-29-47.

SOURCES: Codes, Hemingway's 1917, § 4452; 1930, § 4471; 1942, § 4697; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

§ 51-29-51. Collection of assessments.

After the assessment of benefits or betterments and damages and the levy of assessments to be paid shall have been made and become final in the manner hereinbefore provided, and for the purpose of facilitating the collection of the assessments so levied, it shall be the duty of the board of commissioners to prepare, or cause to be prepared, a copy or copies of the assessment roll in which they shall inscribe the names of the landowners, the description of the tracts of land assessed, the total betterment assessed against each tract, and the total damages assessed against each tract, and the amount of the levy for the current year, which shall be the amount of tax to be collected for that year by the tax collector. The commissioners may at any time also employ some competent person to calculate the amount of tax to be paid each year for each tract of land in the district, and extend the same on the rolls of the district. Such copy of the roll shall be certified to by the commissioner and be deposited with the clerk of the board of supervisors of the judicial district of the county in which the land lies, and if a drainage district embraces lands lying in more than one county or judicial district, a copy of said roll shall be filed with the clerk of the board of supervisors in each district or county. It shall be the duty of the clerk to transmit said roll or rolls to the said tax collector of such county or counties on or before the first day of October of the year in which the tax levy is to be collected, and said roll shall constitute the authority and be the guide for the collection of said drainage tax by the collector. If any collector shall wilfully neglect, fail, or refuse to collect any tax shown on said roll to have been levied in the manner herein provided, he shall be liable on his bond as county tax collector for any taxes lost to the drainage district, together with damages thereon at the rate of thirty per cent.

For any failure to pay over any tax so collected at the same time he is required by law to pay over state and county taxes, said tax collector shall be liable for damages at the rate of thirty per cent and interest at the rate of six per cent per annum on the principal and damages.

SOURCES: Codes, Hemingway's 1917, § 4453; 1930, § 4472; 1942, § 4698; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

JUDICIAL DECISIONS

1. In general.

Where petition alleged that drainage commissioners had failed to make annual assessment as required by statute, neither board of supervisors nor tax collectors were necessary parties in mandamus to compel payment of bonds. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Petition held sufficient to charge drainage commissioners had failed to make annual assessments as required by statute. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Petition in mandamus to compel payment of drainage district bonds need not show claim first presented to supervisors and disallowed, and liability on bonds reduced to judgment. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937).

Law does not contemplate allowance of compensation for damages resulting from negligence. Stephens v. Beaver Dam Drainage Dist., 123 Miss. 884, 86 So. 641 (1921).

Drainage district is an "involuntary public corporation." Stephens v. Beaver Dam Drainage Dist., 123 Miss. 884, 86 So. 641 (1921).

In absence of statute, public corporation is not liable for negligence of officers, agents, or employees. Stephens v. Beaver Dam Drainage Dist., 123 Miss. 884, 86 So. 641 (1921).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:63 (payment of assessment), 92:65 (covenant of property owners as to payment of assessment).

CJS. 28 C.J.S., Drains §§ 158 et seq.

§ 51-29-53. Duties of treasurer.

The treasurer of each county may be the treasurer of all drainage districts organized under this chapter in their respective counties and, as such treasurer, shall receive from the county tax collector, whose duty it shall be to collect all moneys levied by said drainage commissioners or by the board of supervisors at their request. Where a drainage district is organized lying in more than one (1) county, the board of commissioners of any such drainage district may select the treasurer of either or any county in which a part of the district lies, who shall be the treasurer of said district; or whether the district lies in one or more counties, the board of commissioners may select their treasurer and remove him at their pleasure, whose duty shall be the same as those of the county treasurers of such district. The board of commissioners shall compel such county treasurer or treasurers selected by them to give bond to them, as commissioners of said district, in an amount equal to the amount of any sum or sums of money likely to come into said treasurer's hand at any one (1) time, and said commissioners shall enter an order on their minutes fixing the amount of the bond of such treasurer. However, in the event that one (1) treasurer serves more than one (1) board of commissioners, in lieu of separate bonds, he may be required to give bond payable jointly to all commissioners served in an amount not to exceed three hundred thousand dollars ($300,000.00). The said board of commissioners shall, however, select a depository or depositories of the funds of the district and enter the selection on the minutes of the district. Such depository or depositories may qualify as depository of the district in like manner as required by the law on depositories, giving security as therein required, and may place with the treasurer of the district as security for such deposit any of the drainage bonds of the district for which it proposes to qualify as the depository.

The treasurer shall pay out no money save upon the order of the board of commissioners, and upon a warrant signed by the president thereof. If there be no depository, he shall be allowed a commission of not exceeding one-half of one percent (½ of 1%) on all receipts and not exceeding one-half of one percent (½ of 1%) on all disbursements; he shall not be entitled to any commission on money received from the sale of bonds, or of interest bearing certificates, or of any money paid in liquidation thereof. Said county treasurer or the treasurers selected by the commissioners shall keep a separate account with each drainage district; and every warrant shall state upon its face to whom payable, the amount, and the purpose for which it was issued. All warrants shall be dated and numbered consecutively in a record to be kept by the board of commissioners of the number and amount of each; and no warrant shall be paid unless there are in the treasury funds sufficient to pay all outstanding warrants bearing a lower number. No warrant shall be increased by reason of any depreciation in the market value thereof.

All funds coming into the hands of the treasurer belonging to any drainage district organized under this chapter shall be deposited in the depository provided for herein, to be drawn out by the proper parties and in the manner above provided. All tax collectors may pay drainage taxes into such depositories in the same manner as county funds are paid in, and shall be subject to the same protection as is provided for the protection of general county funds.

SOURCES: Codes, Hemingway's 1917, § 4454; 1930, § 4473; 1942, § 4699; Laws, 1912, ch. 195; Laws, 1914, ch. 269; ch. 162; Laws, 1977, ch. 322, eff from and after passage (approved March 4, 1977).

JUDICIAL DECISIONS

1. In general.

Code 1942, § 4353 imposing liability upon drainage district commissioners on their official bonds to holders of bonds or coupons issued by the district, does not provide for liability of the commissioners on account of their failure to assess sufficient benefits for the payment of all bonds and coupons of two series, or because they caused part of the taxes against the benefits assessed to be paid to the holders of the bonds of the second series without first issuing a warrant in that behalf, especially where the bonds and coupons so paid would have been paid on an equal basis with those of the first series if sufficient benefits had been assessed. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Bank, as de facto depository of funds of drainage district, was not liable to the holders of unpaid bonds of the first issue on ground that the bank paid some of the bonds and interest coupons of the second issue without first requiring the drainage district commissioners to enter a written order on the minutes and issue a warrant for that purpose, even though the second bond issue was invalid because additional benefits had not been assessed against the lands of the district as a basis for the issuance of that issue, where the bank had no knowledge thereof; nor was the bnak liable on a trust-fund theory where the bank had no notice that the funds were being held in trust exclusively for the payment of the bonds of the first issue. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

ATTORNEY GENERAL OPINIONS

The board of supervisors cannot contract for services that may infringe on the exercise by the chancery clerk of his statutory duties; such duties include but are not limited to the issuance of warrants under the seal of his office, the duties of County Auditor, and the duties of County Treasurer. Goodwin, Mar. 30, 2001, A.G. Op. #01-0156.

§ 51-29-55. Duties of tax collector.

In making a settlement with the treasurer, the tax collector of each county shall pay the amount due the drainage district over to a drainage depository in his county, if there be one in his county; otherwise he shall pay the same to the drainage treasurer. The tax collector in making deposits shall receive triplicate receipts for the same and mail the depository of the funds of the district and the treasurer of said drainage district each a copy thereof. The treasurer shall issue his official receipt for such deposit, if such depository shall have been legally qualified to receive such deposit.

SOURCES: Codes, Hemingway's 1917, § 4455; 1930, § 4474; 1942, § 4700; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

§ 51-29-57. New tax levy in case of deficiency.

If the tax first levied shall prove insufficient to complete the improvement, the commissioners shall report the amount of the deficiency to the board of supervisors, and the board of supervisors shall thereupon make another levy on the property previously assessed for a sum sufficient to complete the improvement, which shall be collected in the same manner as the first levy. When any work has been begun under the provisions of this chapter, which shall not be completed and paid for out of the first or other levy, it shall be the duty of the board of supervisors to make such levy for its completion, and from year to year until it is completed, provided that the total levy shall in no case exceed the value of the benefits assessed on said property. The performance of such duty may be enforced by mandamus at the instance of any person or board interested.

SOURCES: Codes, Hemingway's 1917, § 4456; 1930, § 4475; 1942, § 4701; Laws, 1912, ch. 195.

Cross References — Duty of board of supervisors to make tax levy, see § 51-29-47.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 42.

CJS. 28 C.J.S., Drains §§ 148-151.

§ 51-29-59. Construction contracts.

(1) The board of commissioners herein mentioned shall have control of the construction of the improvements in their districts. They may make purchases and contracts in accordance with Section 31-7-13.

(2) The chancery court or chancellor in vacation may remove any commissioner and appoint his successor, upon proof of incompetency or neglect of duty; but the charge shall be in writing, and such commissioner shall have the right to be heard in his defense and to appeal to the circuit court.

SOURCES: Codes, Hemingway's 1917, § 4457; 1930, § 4476; 1942, § 4702; Laws, 1912, ch. 195; Laws, 1970, ch. 273, § 1; Laws, 2004, ch. 401, § 1, eff from and after passage (approved Apr. 22, 2004.)

ATTORNEY GENERAL OPINIONS

Statute sets forth specific requirements for drainage districts in bidding of construction work but for other purchases Section 31-7-13 and other public purchasing laws would apply to drainage district. McLaurin, July 30, 1993, A.G. Op. #93-0301.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:71-94 (construction contracts).

§ 51-29-61. Contractors to give bond.

All contractors shall be required to give a performance bond and a payment bond, which may be in one or in separate instruments, for the faithful performance of such contract as may be awarded them, with good and sufficient sureties in amounts to be fixed by the board of commissioners; and the board of commissioners shall not remit or excuse the penalty or forfeiture of said bond or bonds or the breaches thereof. The board of commissioners may appoint all necessary agents for carrying on the work and may fix their pay. They may buy all necessary material and implements as may be on hand and which may be necessary for the completion of the improvements under way, or which have been completed; and may in general, make all such contracts in the prosecution of the work as may best serve the public interest. It shall be the duty of the board of commissioners to have the amount of any work done by the contractor estimated from time to time, as may be desirable, by the engineer selected by the board of commissioners; and said board shall draw its warrants in favor of the contractor for not more than ninety per cent (90%) of the work so reported, reserving the remainder until it has been ascertained that the work has been completed according to contract, and is free from liens.

SOURCES: Codes, Hemingway's 1917, § 4458; 1930, § 4477; 1942, § 4703; Laws, 1912, ch. 195; Laws, 1968, ch. 240, § 1, eff from and after passage (approved April 2, 1968).

Cross References — Collection of taxes in drainage district, see § 51-31-129 et seq. Certificates of indebtedness for repairs and restoration, see § 51-33-21.

JUDICIAL DECISIONS

1. In general.

Oil and gasoline furnished contractor for use in operating machinery in digging canal, etc., are "materials." Standard Oil Co. v. National Sur. Co., 143 Miss. 841, 107 So. 559 (1926).

RESEARCH REFERENCES

ALR. State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

§ 51-29-63. Commissioners may borrow money.

For the purpose of constructing and maintaining the ditches and other improvements provided for under this chapter, for carrying out the purposes and provisions of this chapter, and for paying for the work incident thereto, the said board of commissioners shall have power to borrow money and to issue its negotiable evidence of indebtedness or serial bonds therefor, not exceeding in amount the total amount of benefits assessed against all the real property in the district. Such bonds shall be in such sums and denominations of not less than one hundred dollars ($100.00) each as the said board of commissioners may prescribe, shall each be signed by the members of the said board of commissioners and bear the seal of its drainage district, and shall be made payable, either within or without the limits of this state, to the person or persons to whom sold, or bearer, or bearer simply, at the discretion of said board. No bond issued under the terms of this chapter shall run for more than thirty (30) years; and said bonds may be made to mature serially in such numbers as the board may elect, so that a portion thereof may mature each year as the assessments are collected. Such bonds shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, for which interest coupons may be attached, payable at such time and place as the board may contract, which interest coupons shall bear the facsimile signature of each member of the board of commissioners lithographed thereon. The said bonds may be sold or negotiated in any market in or out of the state at not less than their par value, provided, however, that the cost of lithographing or printing and the necessary expenses of selling said bonds may be incurred.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the registered bond act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, Hemingway's 1917, § 4459; 1930, § 4478; 1942, § 4704; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1974, ch. 361, § 1; Laws, 1983, ch. 494, § 23; Laws, 1984, ch. 506, § 5, eff from and after passage (approved May 15, 1984).

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

Lien of drainage bonds first issued held not prior to that of bonds subsequently issued against additional benefits assessed to complete improvements. First Nat'l Bank v. Commissioners of Lake Cormorant Drainage Dist., 167 Miss. 354, 147 So. 807 (1933); People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Drainage district bonds held void to extent aggregate amount of principal and interest plus ten per cent for contingencies exceeded total assessed benefits of district. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Lien on land, and levy of tax for payment of improvements must be predicated on assessment of benefits equal, at least, to indebtedness. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

2. Construction and application.

This section [Code 1942, § 4704] does not authorize the commissioners of an existing drainage district, whose original plan of improvement has been adopted and constructed and the assessment of benefits therefor completely exhausted, to borrow money for the purpose of paying preliminary expenses incurred in connection with a proposed new program of improvements in the district which was abandoned without assessment of additional benefits. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

In order for the special act (Local and Private Laws of 1924, chapter 607), authorizing a particular drainage district to issue additional bonds, to have constituted the proper exercise of legislative power, it should have required that the additional bonds to be issued thereunder should be in an amount, the principal and interest of which, together with the principal and interest of the outstanding bonds, should not exceed the sum of the benefits theretofore assessed, or to be assessed, against the lands. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Code 1942, § 4353 imposing liability upon drainage district commissioners on their official bonds to holders of bonds or coupons issued by the district, does not provide for liability of the commissioners on account of their failure to assess sufficient benefits for the payment of all bonds and coupons of two series, or because they caused part of the taxes against the benefits assessed to be paid to the holders of the bonds of the second series without first issuing a warrant in that behalf, especially where the bond and coupons so paid would have been paid on an equal basis with those of the first series if sufficient benefits had been assessed. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Neither commissioners of drainage district personally, nor the sureties on their official bonds, were liable to holders of unpaid bonds of first series issued by the district for paying bonds of the second series which were invalid because additional benefits had not been assessed against the land as a basis for the issuance of the second bond, where the commissioners acted ministerially in good faith, since the acts of the commissioners were chargeable to the board in its official capacity rather than to the members individually; Moreover, they were not liable on the theory that the funds of the district constituted trust funds exclusively for the payment of the bonds of the first issue. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Drainage district commissioners had right to assess additional benefits against the land in the district for further improvements after full expenditure of the proceeds from the first bond issue, if in their judgment further benefits would accrue to the landowners by virtue of such further construction, or if in their judgment it had become necessary to preserve the improvements theretofore made. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

There is no personal liability on the part of property owners for the payment of drainage district bonds. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Legislature may authorize drainage district to contract debts prior to or subsequent to assessment of benefits, provided liability imposed is not in excess of benefits accruing to land. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where supplemental bonds were found necessary, new assessment of benefits could be made if commissioners believed land would receive additional benefits to those already assessed. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Commissioners could be compelled by mandamus to meet and consider whether levy of additional benefits justified, but judgment as to whether additional benefits had, or would accrue could not be controlled. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where original and additional bond issues exceeded assessment of benefits and district was extended to other lands already benefited by improvements, new assessments could be made on all lands of district as extended. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where original and additional bonds exceeded assessment of benefits, it was duty of commissioners and supervisors to make new assessment, and levy tax to pay bonds, if it appears new assessment is justified. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Bondholders could not compel new assessment and tax levy, but could only compel commissioners to meet and exercise discretion as to whether justified. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Incurring of obligations are to be determined not by electors but by the landowners. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

Money to be collected from landowners is a local assessment and not a tax, and may be collected without submission of bond issue. Huston v. Mayo, 120 Miss. 523, 82 So. 334 (1919).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 40.

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-29-65. Bonds to be registered.

Said bonds when issued shall be registered by the clerk of the board of supervisors in a book kept for that purpose, which shall be a public record and shall be a faithful and correct register showing the date, number, amount, and date due of said bonds, the place of payment, and to whom issued or paid, of all bonds issued, sold, or used; and the said clerk shall enter on said register an account of all the bonds paid, received, or taken up by said board of commissioners. It shall be the duty of the said commissioners to promptly furnish to the said clerk necessary data for the keeping of said registers, to cancel and destroy all bonds and coupons which have been paid, and to report the facts to the said clerk to be entered on said register; and no bond or coupons paid, received, or taken up by said board of commissioners shall again be used or reissued. The minutes of the said board of commissioners are furthermore required to show fully the date, number, amount, place of payment, to whom issued and paid of each of said bonds, and shall further show the coupons and bonds paid, taken up, and destroyed, as a check on the register required to be kept by said clerk.

And for the prompt payment of said bonds and coupons the board of commissioners may irrevocably pledge the full faith, credit and resources of the district, and all assessments of said district, as provided in this chapter.

SOURCES: Codes, Hemingway's 1917, § 4460; 1930, § 4479; 1942, § 4705; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Registration of outstanding bonds, see § 31-19-17.

§ 51-29-67. Negotiable evidences of debt to contractor.

Said board of commissioners may also issue to the contractor or other persons who do the work, or any part thereof, negotiable evidences of debt of the district, bearing interest at a rate not to exceed six per cent per annum, secured in like manner as the bonds above provided for.

SOURCES: Codes, Hemingway's 1917, § 4461; 1930, § 4480; 1942, § 4706; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

§ 51-29-69. Commissioners not liable for damages.

No member of any board of improvement shall be liable for any damages sustained by any one in the prosecution of the work under his charge, unless it shall be made to appear that he has acted with a corrupt and malicious intent.

SOURCES: Codes, Hemingway's 1917, § 4462; 1930, § 4481; 1942, § 4707; Laws, 1912, ch. 195.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 29.

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-29-71. Procedure to alter plans.

The commissioners may at any time alter the plans of ditches and drains, but before constructing the ditches according to the changed plans, the changed plans with accompanying specifications, showing the width and depth of the ditches as changed, shall be filed with the clerk of the chancery court, or chancellor in vacation, and notice of such filing shall be given by publication for two insertions in some newspaper issued and having a bona fide circulation in each of the counties in which there are lands belonging to the district. If by reason of such change of plans any property owner deems that the assessment has become inequitable, he may petition the chancery court, or chancellor in vacation, which shall thereupon refer his petition to the board of commissioners of the district, who shall reassess his property, increasing or diminishing his assessment as they may find just. From such action of the commissioners the property owner shall have the same right of appeal to the board of supervisors that is herein provided for in cases of original assessment. However, in no case after the issuance of bonds, shall the assessment be lowered either by the board of commissioners or the chancery court, or chancellor in vacation, so as to endanger the security of said bonds. Any reduction in benefits may be allowed as damages, and the allowances for such damage shall be secondary and subordinate to the rights of holders of bonds or evidences of indebtedness issued theretofore. No change of plans as above authorized shall be made so as to lower the standard of efficiency of the proposed system of improvement, nor so as to jeopardize the rights of any holder or holders of bonds previously issued; and this question may be raised by any landholder before the chancery court, or chancellor in vacation, with rights of appeal as herein provided.

SOURCES: Codes, Hemingway's 1917, § 4463; 1930, § 4482; 1942, § 4708; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

JUDICIAL DECISIONS

1. In general.

Commissioners are not authorized to make complete change of original scheme, but can change only minor details. Armistead v. Southworth, 139 Miss. 723, 104 So. 94 (1925).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:91 (reservation of right to change plans).

§ 51-29-73. Landowners may build ditches to connect with public ditch.

Any landowner within the district may build ditches to drain his lands into the public ditches, and if any intervening landholders shall refuse permission to cross his lands with such ditch, the board of commissioners may, by proceedings according to the provisions of the chapter on eminent domain, condemn a right of way for such ditch. In such proceedings the jury shall deduct from the damages the benefits that will accrue to such intervening landowner by the construction of such ditch, and said intervening landowner shall have the right to use such ditch for the drainage of his own lands.

SOURCES: Codes, Hemingway's 1917, § 4465; 1930, § 4484; 1942, § 4710; Laws, 1912, ch. 195.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 37.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:101, 92:102 (application for sewer connection), § 92:103 (resolution giving permission to certain landowners to connect with lateral in drainage district), §§ 92:104, 92:105 (agreement for connection with sewer).

CJS. 28 C.J.S., Drains § 91.

§ 51-29-75. Compensation for connecting with district drainage system.

No corporation, individual, or other drainage district, outside the limits of any district organized or operating under the terms of this chapter, shall drain into any ditch belonging to any district formed or operating under the terms of this chapter, without first paying compensation, to be ascertained by a jury in the circuit court or chancery court, for the use of said ditch, unless an agreement is reached between the commissioners of the district and the corporation, individual, or other drainage district desiring to use such ditch, as to such compensation. This and Section 51-29-77 shall not operate to interfere with vested rights to natural drainage.

SOURCES: Codes, Hemingway's 1917, § 4466; 1930, § 4485; 1942, § 4711; Laws, 1912, ch. 195.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 37.

CJS. 28 C.J.S., Drains § 91.

§ 51-29-77. Ditches outside of district.

In case it is necessary to do so in order to obtain a proper outlet for the drainage system, the commissioners may construct ditches or do other work beyond the border of their district so as to carry the water to some proper outlet or otherwise to secure the object of the improvement. In that event, they shall have the right to condemn a right of way for such drain or other construction, and the proceedings thereof shall be the same that are now provided by law. Such a ditch or drain beyond the limits of the district shall be the property of the district, and no person not assessed shall have the right to dig any lateral drain connecting therewith without the consent of the commissioners. If such property owner cannot agree with the commissioners as to the price to be paid for the privilege of connecting with such ditch, the board of supervisors of the county where such connection is sought to be made shall fix the amount of such compensation, and either shall have the right to appeal from its findings to the circuit court.

SOURCES: Codes, Hemingway's 1917, § 4467; 1930, § 4486; 1942, § 4712; Laws, 1912, ch. 195.

Cross References — Compensation for connection with district drainage system, see § 51-29-75.

§ 51-29-79. Maintenance of system.

The drainage district shall not cease to exist upon the completion of its drainage system, but shall continue to exist as a body corporate for the purpose of preserving the system of drainage, keeping the ditch clear from obstruction, extending, widening, or deepening the ditches from time to time, and for doing such other things and acts in order to carry out the purposes of this chapter and of the drainage system so established, as may be found advantageous to the district. For those purposes, the board of commissioners may borrow money and issue its bonds in such sums and in the manner provided in this chapter, and may from time to time apply to the chancery court, or chancellor in vacation, for the levying of additional assessments upon the benefits for the payment of said work or said bonds. Upon the filing of such application or petition with the clerk of the chancery court, he shall give notice by publication by two insertions in a newspaper published in each of the counties in which the district embraces land. Any property owner seeking to resist such additional levy may appear at the next term of the chancery court, or the chancellor in vacation, not less than ten days after the last insertion of said notice and urge his objections to such levy. In case he fails to appear, such levy shall stand with the force of a final judgment, but either the property owners or the commissioners may appeal to the supreme court not later than twenty days after the date of such levy.

SOURCES: Codes, Hemingway's 1917, § 4468; 1930, § 4487; 1942, § 4713; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Authority of drainage district to borrow money for repairs, see § 51-33-27.

JUDICIAL DECISIONS

1. In general.
2. Borrowing money.
3. Additional assessments.

1. In general.

This section [Code 1942, § 4713] does not authorize commissioners of an existing drainage district, whose original plan of improvement has been adopted and constructed, and the assessment of benefits therefor completely exhausted, to borrow money or levy a tax for the purpose of paying preliminary expenses incurred in connection with a proposed new plan of improvements in the district which was abandoned without assessment of additional benefits. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

Purpose of drainage acts is reclamation of overflowed, non-productive or insanitary lands, and the several districts are organized as legal and administrative entities and, as such are a body politic with the right of perpetual succession. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

Funds derived from assessment of benefits to added territory to drainage district can be used to maintain improvements already made therein. Self v. Indian Creek Drainage Dist. No. 1, 158 Miss. 7, 128 So. 339 (1930).

Landowner's failure to appear pursuant to notice for construction of additional levee held not waiver of objection thereto or claim for damages. Dick v. Atchafalaya Drainage & Levee Dist., 147 Miss. 783, 113 So. 897 (1927).

2. Borrowing money.

In proceeding to authorize drainage district to borrow money to repair its system, final decree providing that no bonds be issued until contract to perform new work shall be executed according to law will be relaxed by supreme court to provide that commissioners may, in their discretion, negotiate contract, if possible, after filing and receiving approval of further plans and specifications, and submit same to chancellor, to be approved or disapproved by him, subject to ability to sell the bonds, or if such contract is impossible to secure, on proof of competent evidence of that fact, chancellor make such other provision, in his discretion as will overcome such obstacle, within purview of the law. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

In proceeding by drainage district for authority to borrow money for maintenance of drainage system, chancellor has no authority after final judgment establishing it, to release lands from district, but where lands will not be benefited by rehabilitation of drainage system because they involve abandoned drainage ditch which never functioned, such lands should be released from new assessment and levy and commissioners released from clearing out and maintaining abandoned ditch, and chancellor's release of land from district may be construed as so holding. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

When chancellor rules in favor of drainage district by overruling objections of landowners to borrowing of money to repair drainage system under this section [Code 1942, § 4713] it cannot be said that he was in error in hearing proof on questions raised by objections. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

3. Additional assessments.

Issue of whether landowner's objections to petition for additional maintenance assessment under this section [Code 1942, § 4713] was filed within proper time becomes moot when chancellor overrules objections, after hearing evidence on both sides, and protestants take no cross-appeal from his ruling. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

Additional lands brought within drainage district, without objection, are subject to such assessment of benefits, after having been brought into district, as are right and proper. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

An additional assessment may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears "absolutely necessary in order to preserve and maintain the improvements of the district," and the mere fact that landowner was not apparently benefited from the improvement and maintenance of a certain drainage canal in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

Subsequent assessment by drainage district must be based on benefits accruing and made against property of entire district. Dick v. Atchafalaya Drainage & Levee Dist., 147 Miss. 783, 113 So. 897 (1927).

§ 51-29-81. Taxes collected; delinquent lands; settlements.

All taxes levied under the terms of this chapter shall be payable at the same time the state and county taxes are payable. The tax collector shall place the same upon the tax receipt along with the state and county and other taxes, shall collect all of the taxes due on said land together, and shall not accept payment of any sum less than the entire aggregate amount of all state, county, drainage, and other taxes due upon said lands. Should said taxes, including the drainage taxes, be not paid at maturity, the tax collector shall sell said lands for all taxes due thereon, including drainage taxes, at the time and in the manner now provided for the sale of land for taxes due thereon to the state and county. Such sale shall be subject to the provisions of law for the sale of land for state and county taxes, and the owner of said land shall have the right to redeem from said sale as now provided by law.

When any lands situated in a drainage district are sold for nonpayment of taxes thereon, the drainage district in which same is situated may, in the discretion of its board of commissioners, appear at said sale and purchase said land in the name of the drainage district in the same manner as an individual, and in that event shall pay to the tax collector the amount of said purchase price out of the funds of the district.

If upon offering the land of any delinquent taxpayer constituting one tract, no person will bid for it the whole amount of taxes and all costs, the collector shall strike same off to the state in the same manner as provided for in case of sales for state and county taxes.

When any land shall be sold to the state for taxes due thereon and the same shall not be redeemed within the time provided by law, the same may be sold or contracted for sale by the land commissioner, in the manner provided for the sale and contract for sale of other tax forfeited lands.

Except as herein otherwise provided, the provisions of the law relative to the sale of delinquent land for taxes, the title thereto, and the handling and sale of lands sold to the state for taxes shall apply to all sales under this chapter.

When any drainage district shall have purchased lands at any tax sale under the terms of this chapter, the board of commissioners thereof, after the period of redemption has expired, may sell, lease, or rent the lands so purchased. The deed or lease shall be executed by the president and secretary of the board of commissioners under the seal of the district. But said lands shall not be sold for an amount less than the price paid therefor and all subsequently accrued state, county, drainage, and other taxes. However, the drainage commissioners with the consent of the bondholders may sell the lands of the drainage district for an amount less than the price paid therefor and all subsequently accrued state, county, drainage, and other taxes.

The drainage district shall pay all state and county and other taxes assessed against said land purchased by it at tax sales under the provisions of this chapter, and may pay the same out of any funds belonging to the district.

The chancery clerks of the counties in which are located drainage districts, or parts thereof, shall account to the commissioners of such drainage districts for money received in the redemption of lands sold for taxes belonging to such districts, in the same manner as for state and county taxes. Any lands sold for any drainage taxes may be redeemed in the same manner and within the same time as provided by law for the redemption of lands sold for state and county taxes upon the payment of all costs, five per centum damages on the amount of taxes for which the land was sold, and interest on all such taxes at the rate of one per centum per month or any fractional part thereof, from the date of such sale.

Lands purchased by the board of drainage commissioners of any drainage district at a tax sale and lands purchased by the board of drainage commissioners of any drainage district from the state shall be liable thereafter for state and county taxes levied and assessed against the same to the same extent as if owned by a natural person or a private corporation. And it shall be the duty of the tax assessor to assess said lands for taxes in the same manner as other lands are assessed; and if the taxes are not paid when due, such lands shall be sold by the tax collector for the delinquent taxes due and unpaid at the time and in the manner provided by law.

SOURCES: Codes, Hemingway's 1917, § 4469; 1930, § 4488; 1942, §§ 4087, 4714; Laws, 1912, ch. 195; Laws, 1926, ch. 303; Laws, 1934, ch. 227; Laws, 1936, ch. 174.

Editor's Note — Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the Secretary of State.

Cross References — Lands struck off to municipality, see § 21-33-69.
Property exempt from taxation, see § 27-31-1.
Recording sales of tax lands, see § 29-1-21.
Assessment for taxes of land sold by state, see § 29-1-83.
Abatement of lien of drainage district on land sold for taxes, see 29-1-97.
Certification of order of board to tax collector, see § 51-29-113.
Collection of taxes in drainage district, see § 51-31-129.
Sale price of tax lands, see § 51-33-51.

JUDICIAL DECISIONS

1. In general.
2. Delinquent taxes.
3. Sale for taxes.
4. Purchase by state or political subdivision.

1. In general.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

This section [Code 1942, § 4714] and other sections (Code 1942, §§ 4090, 4651, 4695), declaring that the lien on the land for the collection of the assessed benefits shall not be abated, are all designed for the protection of the drainage district and to prevent an impairment of its contract with the bondholders who may have supplied the funds for the draining and improvement of the lands against which the lien attaches. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Drainage assessments and taxes create no personal liability against the landowner since they are charges against the land only. Waits v. Black Bayou Drainage Dist., 186 Miss. 270, 185 So. 577 (1939).

This section [Code 1942, § 4714] provides the exclusive remedy for the collection of plaintiff's taxes, so that neither the circuit court nor the chancery court has jurisdiction of an action by a drainage district to recover drainage taxes assessed against land in the district. Waits v. Black Bayou Drainage Dist., 186 Miss. 270, 185 So. 577 (1939).

That neither the chancery nor the circuit court had jurisdiction of actions to recover drainage taxes, did not mean, however, that where the tax collector of the county failed or refused to do his duty with reference to the collection of drainage taxes, he could not be forced to do so by the proper proceeding, nor that the landowner was without a remedy where the tax collector proposed to make sale of land for drainage purposes when they were not liable therefor in whole or in part. Waits v. Black Bayou Drainage Dist., 186 Miss. 270, 185 So. 577 (1939).

2. Delinquent taxes.

Commissioners of insolvent drainage district are not precluded from maintaining proceedings to fix delinquent taxes of certain landowners merely because they have failed to file certain financial reports of the district as required by Code 1942, § 4723. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Where federal bankruptcy trustees of drainage district and the drainage commissioners joined in a proceeding to fix the amount of delinquent taxes against certain landowners, but the federal bankruptcy court had no jurisdiction to administer the affairs of the district, the bankruptcy trustees were eliminated as parties, and the drainage commissioners were entitled to the custody of the funds sought to be collected without necessity of instituting a new proceeding therefor. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Plea in abatement to petition by federal bankruptcy trustees of drainage districts to determine amount of delinquent taxes, on ground that the federal bankruptcy proceeding was void, did not constitute a collateral attack, since court only had to look to the face of the federal proceedings and the absence of any state statute consenting thereto to determine whether the proceeding was void. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

3. Sale for taxes.

The law does not require the lands to be sold in parcels not exceeding 40 acres, but only requires that they be thus first offered. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

In action to set aside a sale of land for delinquent drainage taxes, burden was on complainant to show that the lands were not first offered in parcels not exceeding 40 acres as required by law. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

Report of sale of land for delinquent drainage taxes, showing that land was sold in parcels larger than 40 acres, but silent as to how the lands were offered for sale, although stating that the sale was made "pursuant to law," did not aid complainant's burden of proving allegation that tax collector did not first offer the lands in parcels not exceeding 40 acres. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

The clause in the first paragraph of this section [Code 1942, § 4714], providing that a tax collector shall sell land for all taxes due thereon, including drainage taxes, "at the time and in the manner now provided for the sale of land for taxes due thereon to the state and county," plainly means that in making a sale of land, constituting one connected body, for delinquent drainage taxes, it shall first be offered in 40-acre blocks, the offering being a part of the manner of sale; and, accordingly, where, in the sale of 400 acres of land for delinquent drainage taxes, the sheriff's report of the sale showed that he offered and sold such land in four separate divisions, three of 80 acres each and one of 160 acres, the sale was void. Jones v. Seward, 194 Miss. 763, 12 So. 2d 132 (1943).

Chancery clerk is required to collect, from person offering to redeem land from sale for nonpayment of drainage assessments thereon, all drainage assessments that have accrued since sale. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Sale of land for nonpayment of drainage assessment does not relieve it from lien for other assessments thereafter to become due. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

4. Purchase by state or political subdivision.

While the tenants in common may be required to bear their proportionate share of expenditures and disbursements and to pay off proportionately the purchase price for outstanding titles and claims, a drainage district has not the power to spend funds to meet these obligations as a tenant in common with others. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A county, on becoming a voluntary purchaser of drainage district lands encumbered by a statutory judgment for assessments, does not acquire such lands free of the lien despite the fact that the lands are to be used for a public purpose. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Code 1942, § 9697, exempting from taxation property belonging to the state or to any county, levee board or municipal corporation thereof, was never intended to abate an existing judgment lien as fixed by final decree of the chancery court against land subsequently purchased by the state or one of its subdivisions. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Under the statute, it is clear that it was not the purpose of the legislature to discharge the drainage district lands from accruing of taxes during the period it is held by the state under a tax sale. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

While the state is not required to pay the taxes accruing on the land for drainage purposes, and such taxes are held in abeyance during the time it is held by the state, yet the taxes do accrue subject to the state's superior right, and when the state parts with its title, it does not free the land from such lien until the taxes are paid in full, and proceedings may be had under the statute to collect the assessments levied during the years when the state held the title, when the taxes were in abeyance. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

Where land sold to state for taxes is not redeemed, all taxes thereon remain in abeyance until land is sold by state. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 180 et seq.

CJS. 28 C.J.S., Drains §§ 155, 156 et seq.

§ 51-29-83. Drainage taxes erroneously collected.

When lands have been erroneously taxed for purposes of a drainage district, whether such land so taxed lies within or without the limits of the district, and the commissioners of such drainage district allow the claim for the amount of the taxes so erroneously paid, or where the claimant secures a judgment against any drainage district for the amount of taxes erroneously paid, then, in the event the drainage district does not have sufficient funds with which to pay said claim or judgment, the claimant may at his election obtain from the commissioners of the drainage district a certificate for each year that taxes were erroneously collected, which certificate shall show the amount of taxes due to be refunded on account of such erroneous payment.

SOURCES: Codes, 1930, § 4489; 1942, § 4715; Laws, 1930, ch. 172.

Cross References — Refund of taxes erroneously paid generally, see § 27-73-1.

§ 51-29-85. Certificates received in lieu of cash.

Whenever such certificate or certificates are issued, the person or persons to whom the same is issued may use such certificate or certificates in purchasing any lands located in said district that have been forfeited to the State of Mississippi for failure to pay taxes thereon. The land commissioner and state treasurer shall receive such certificates in lieu of cash for the amount of the taxes due on said lands to such drainage district, but the amount of the state and county taxes due thereon, if any, shall be paid in cash.

The person or persons to whom certificates of indebtedness for taxes erroneously paid have been issued as provided under Section 51-29-83, if they so elect, shall also be entitled to use such certificates, either in part or whole payment of drainage taxes in the district by which issued at a subsequent tax paying date, notwithstanding such certificate or certificates may have been issued for the purchase of state lands as provided in this section.

SOURCES: Codes, 1930, § 4490; 1942, § 4716; Laws, 1930, ch. 172.

Editor's Note — Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the Secretary of State.

Cross References — Payment of purchase money of state lands, see § 29-1-79.

§ 51-29-87. Disposition of certificate.

Whenever the state treasurer and land commissioner shall have accepted any such certificate in the purchase of such lands, it shall be his duty to immediately forward the same to the drainage district commissioners with a statement as to the lands purchased and the amount of money allowed on said purchase on account of said certificate; and the said drainage commissioners shall accept the certificate in lieu of money to that extent and amount from said state treasurer and land commissioner. Whenever the county tax collector shall have accepted any such certificate or certificates in the payment of drainage taxes, it shall be his duty to immediately inform the drainage district commissioner of his action, with a statement containing the amount of taxes and description of lands where a certificate or certificates were applied for taxes in lieu of money payment.

SOURCES: Codes, 1930, § 4491; 1942, § 4717; Laws, 1930, ch. 172.

Editor's Note — Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the Secretary of State.

§ 51-29-89. Bonds to be a lien on land.

All bonds and evidences of indebtedness issued by the commissioners under the terms of this chapter shall be secured by a lien on all lands and railroads subject to taxation under this chapter, in an amount not to exceed the amount of benefits assessed against such lands and railroads. The board of commissioners shall see to it that an assessment is levied annually and collected under the provisions of this chapter, so long as it may be necessary for the payment of any bonds issued or obligations contracted under its authority, together with the interest thereon; and the making or levying of said assessment or levy may be enforced by mandamus at the instance of any person interested.

SOURCES: Codes, Hemingway's 1917, § 4470; 1930, § 4492; 1942, § 4718; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Orders for assessments and levies to cover improvements, see § 51-29-45.

JUDICIAL DECISIONS

1. In general.
2. Relation of indebtedness to benefits.
3. Mandamus.

1. In general.

This section [Code 1942, § 4718] does not authorize commissioners of an existing drainage district, whose original plan of improvement has been adopted and constructed, and the assessment of benefits therefor completely exhausted, to borrow money or levy a tax for the purpose of paying preliminary expenses incurred in connection with a proposed new plan of improvements in the district which was abandoned without assessment of additional benefits. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

Lien of drainage district bonds first issued does not have priority over that of bonds subsequently issued against additional benefits assessed to complete improvements. People's Bank Liquidating Corp. v. Beashea Drainage Dist., 199 Miss. 505, 24 So. 2d 784 (1946).

Purchaser's agreement in land contract "to assume all 1930 taxes," even if including 1930 drainage taxes, held not to imply further agreement to assume all drainage taxes for subsequent years. Goff v. Jacobs, 164 Miss. 817, 145 So. 728 (1933).

Owner could remove timber from land within drainage district without payment of installments of assessment to become due on land subsequent to removal. Matthews v. Panola-Quitman Drainage Dist., 158 Miss. 647, 130 So. 910 (1930).

2. Relation of indebtedness to benefits.

Lien on land, and levy of tax for payment of improvements must be predicated on assessment of benefits equal, at least, to indebtedness. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where original and additional bond issues exceeded assessment of benefits and district was extended to other lands already benefited by improvements, new assessment could be made on all lands of district as extended. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where supplemental bonds were found necessary, new assessment of benefits could be made if commissioners believed land would receive additional benefits to those already assessed. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Legislature may authorize drainage district to contract debts prior to or subsequent to assessment of benefits, provided liability imposed is not in excess of benefits accruing to land. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Drainage district bonds held void to extent aggregate amount of principal and interest plus ten per cent for contingencies exceeded total assessed benefits of district. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where original and additional bonds exceeded assessment of benefits, it was duty of commissioners and supervisors to make new assessment, and levy tax to pay bonds, if it appears new assessment is justified. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Where drainage district's unpaid indebtedness amounted to only about one-tenth of the assessed benefits, bondholders were entitled to payment in full in absence of showing that district was insolvent, notwithstanding that cash on hand was insufficient to pay all outstanding bonds. Teoc Sub-Drainage Dist. v. Halliwell, 180 Miss. 720, 178 So. 84 (1938).

3. Mandamus.

Petition in mandamus to compel payment of drainage district bonds need not show claim first presented to supervisors and disallowed, and liability on bonds reduced to judgment. Johnson v. Bruce, 177 Miss. 581, 171 So. 685 (1937); Teoc Sub-Drainage Dist. v. Halliwell, 180 Miss. 720, 178 So. 84 (1938).

Bondholders could not compel new assessment and tax levy, but could only compel commissioners to meet and exercise discretion as to whether justified. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

Commissioners could be compelled by mandamus to meet and consider whether levy of additional benefits justified, but judgment as to whether additional benefits had, or would accrue could not be controlled. Anderson v. McKee, 182 Miss. 156, 179 So. 858 (1938).

§ 51-29-91. Entire district revenues and realty pledged to secure bonds.

To the payment of both principal and interest of the bonds and other negotiable evidences of debt to be issued under the provisions of this chapter, the entire revenues of the district from any and all sources and all real estate and railroads subject to taxation in the district are by this chapter pledged, in an amount not to exceed the amount of betterments assessed against said lands and railroads. The board of commissioners is hereby required to set aside annually from the first revenues collected from any source whatever a sufficient amount to secure and pay the interest on said bonds and evidences of indebtedness and a sinking fund for their ultimate retirement, if a sinking fund is provided for.

SOURCES: Codes, Hemingway's 1917, § 4471; 1930, § 4493; 1942, § 4719; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Investment of surplus funds, see § 19-9-29.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4719] does not authorize commissioners of an existing drainage district, whose original plan of improvement has been adopted and constructed, and the assessment of benefits therefor completely exhausted, to borrow money or levy a tax for the purpose of paying preliminary expenses incurred in connection with a proposed new plan of improvements in the district which was abandoned without assessment of additional benefits. Gilmore-Puckett Lumber Co. v. Big Brown's Creek Drainage Dist. No. 2, 207 Miss. 316, 42 So. 2d 226 (1949).

Bonds issued in excess of assessed benefits are void. Clark v. Pearman, 126 Miss. 327, 88 So. 716 (1921).

§ 51-29-93. Error in names not to invalidate assessments.

No error in the names or residences of the owners of railroads, lands, or improvements, or in the description thereof, shall invalidate said assessment or levy of taxes or benefits, if sufficient description is given to ascertain where the lands, railroads, or improvements are situated.

SOURCES: Codes, Hemingway's 1917, § 4473; 1930, § 4494; 1942, § 4720; Laws, 1912, ch. 195.

§ 51-29-95. Ditches may cross highways and railroads.

The commissioners of the district shall have the right and power to carry the ditches, either main or lateral, across any highway; and the board of supervisors shall construct suitable bridges across such ditches.

Such ditches may also be carried under or through any railroad track or tramway, and in such event the commissioners of the drainage district shall notify the railroad company or owner of said tramway or telegraph or telephone companies, operating lines of telegraph or telephone under or through which it is proposed to carry such ditches, of the probable time at which the contractor will be ready to enter upon the right of way of any of said companies and construct the work thereon. It shall thereupon be the duty of any said companies or owners of said lines of railway, telegraph, or telephone to send a representative to view the ground with the superintendent of construction, or other person appointed by the commissioners, and arrange the exact time at which the said work can be most conveniently done. At the time agreed upon, said railroads or owners thereof shall remove all rails, ties, stringers, and such other obstructions as may be necessary, and such owners of telegraph and telephone lines shall remove all wires, poles, and other obstructions as may be necessary, to permit the excavation of a channel or channels through its right of way. The work so done shall be planned and conducted so as to interfere in the least possible manner with the business of said railroad, telegraph, and telephone companies. In case any of such persons or corporations refuse and fail to remove any of said obstructions and to allow the construction of the work through its right of way, it shall be held as delaying the construction of a public work and improvement, and shall be liable to a penalty not to exceed fifty dollars ($50.00) per day for each day of delay thereof and all damages sustained by the district or contractor, to be recovered in any court having jurisdiction. Such penalty shall inure to the drainage district, and such damages shall inure to the person, firm, or district damaged. An itemized bill of the expenses of the railroad company for opening its track shall be made and presented to the commissioners of the district at some day previous to the day set for passing through said right of way, and a like itemized bill of expense attending the removal of wires and poles of telegraph and telephone companies shall be so presented, including all damages that will be sustained by any of said companies by the construction of said work. Thereupon the board of commissioners shall allow and pay such part thereof as it sees fit and proper, from which allowance either of said companies shall have the right of appeal to the chancery court, or chancellor in vacation; but such appeal shall not operate so as to prevent the drainage commissioners from constructing the proposed work through the rights of way of any of said companies.

This section shall not, however, conflict in any way with the right of eminent domain or the laws relating thereto, but is meant to be operative under and in connection with other provisions of this chapter.

SOURCES: Codes, Hemingway's 1917, § 4474; 1930, § 4495; 1942, § 4721; Laws, 1912, ch. 195; Laws, 1914, ch. 269.

Cross References — Passing railroads with canal, see § 51-31-89.
How drain may cross public road, see § 51-31-95.
Relocation of roads due to flood control works, see § 51-35-3.

JUDICIAL DECISIONS

1. In general.

In an action by a drainage district against a county to recover reimbursement for expenses incurred in the construction of bridges and culverts over two public roads in the county, the county was entitled to judgment where it never approved the construction undertaken by the district and where § 19-3-41 granted jurisdiction over roads, ferries and bridges to the county board of supervisors and §§ 51-29-95 and 51-31-95 left to the determination of the board what constituted suitable bridges across drainage districts and what bridges were necessary to be removed or constructed; neither statute authorized the work performed by the district or a suit for reimbursement. Leflore County v. Big Sand Drainage Dist., 383 So. 2d 501 (Miss. 1980).

§ 51-29-97. Financial statement and audit.

Within sixty (60) days after the end of the fiscal year following the organization of said drainage district, and annually thereafter, the commissioners shall prepare and retain a copy of a sworn statement of the financial condition of the district to cover the preceding fiscal year. The report shall contain, among other things, a statement of the cash on hand the first of the year for which the report is made, together with all other assets of the district; the total receipts of the preceding year; the disbursement for administration, for construction, for maintenance, for bonds redeemed, and for interest due on outstanding bonds, together with all other indebtedness of the district. The commissioners are further authorized and empowered to do any and all things incident to the management and affairs and business of the district.

The State Auditor of Public Accounts or his assistant may annually audit the books, financial report and expenditures of the commission in the same manner that such officer audits other boards and commissions; and the same powers and duties which such officer exercises or enjoys with respect to other boards and commissions shall be exercised and performed in the same manner in his audit of drainage district commissions. A fee of not exceeding Thirty Dollars ($30.00) per man hour for the time required to conduct each audit shall be paid by each drainage district audited under this section. All such fees shall be paid into the State Department of Audit Fund. Upon the recommendation of the Director of the State Department of Audit, the State Auditor shall appoint auditors on a temporary or permanent status to perform drainage district audits. The State Auditor shall not audit dormant districts which have no income or disbursements during any year.

SOURCES: Codes, Hemingway's 1917, § 4476; 1930, § 4497; 1942, § 4723; Laws, 1912, ch. 195; Laws, 1958, ch. 459; Laws, 1964, ch. 211, § 1; Laws, 1985, ch. 455, § 10; Laws, 2008, ch. 558, § 3, eff from and after July 1, 2008.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer.

Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

JUDICIAL DECISIONS

1. In general.

Commissioners of insolvent drainage district are not precluded from maintaining proceedings to fix delinquent taxes of certain landowners merely because they have failed to file certain financial reports of the district as required by this section [Code 1942, § 4723]. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

§ 51-29-99. Penalty for obstructing or damaging drains.

Any person who shall obstruct a drain or damage drainage work provided for by this chapter shall be guilty of a misdemeanor and, on conviction thereof, be fined not more than one hundred dollars nor less than ten dollars; and he shall also be liable to the district for double the cost of removing such obstruction or repairing such damage.

SOURCES: Codes, Hemingway's 1917, § 4477; 1930, § 4498; 1942, § 4724; Laws, 1912, ch. 195.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 51-29-101. Contractors may pass over private lands.

The commissioners, engineers, and contractors, with their teams and outfits engaged in drainage work, shall have the right to pass over all the lands of others to and from the district, being liable to the owner for any damage done thereto. Any owner who shall prevent such passage over his lands shall be guilty of a misdemeanor and fined one hundred dollars for each day that he prevents such passage.

SOURCES: Codes, Hemingway's 1917, § 4479; 1930, § 4500; 1942, § 4726; Laws, 1912, ch. 195.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 51-29-103. Procedure for districts to come under this chapter.

Any district which has heretofore been organized, including swamp land districts, or which may hereafter be organized under other statutes, may become a district under the terms of this chapter as follows:

If a third of the landowners owning a majority of the acreage or a majority of the landowners owning a third of the acreage of real property within any such district shall petition the chancery court, or chancellor in vacation, to constitute them a drainage district under the terms hereof, the clerk of the chancery court shall give notice of the application by two weeks' publication in some newspaper published and having a bona fide circulation in the county or counties in which the lands of said district lie, stating the time when said petition will be heard and the object of said petition. All owners of real property within the district shall have the right to appear and contest the said petition, or support the same. The chancery court, or chancellor in vacation, shall hear the evidence and shall either grant the petition or deny the same, as he may deem it most advantageous to the property owners of the district and to the public benefit. If he grants the petition, the said district shall have all the rights and powers and be subject to all the obligations and provisions provided by the terms of this chapter. If the majority of the landowners or the majority of the owners of the acreage therein petition for the adoption of this chapter, the court or chancellor must make an order declaring that such district shall henceforth be governed by the terms of this chapter, and shall appoint commissioners according to its terms, who shall carry into effect without delay the proposed drainage improvements.

SOURCES: Codes, Hemingway's 1917, § 4480; 1930, § 4501; 1942, § 4727; Laws, 1912, ch. 195; Laws, 1914, ch. 269; Laws, 1956, ch. 349.

§ 51-29-105. Construction of chapter.

This chapter shall be liberally construed to promote the ditching, drainage, and reclamation of wet, swampy, and overflowed lands. The collection of assessments hereunder shall not be defeated by reason of any omission, imperfection, or defect in the organization of any district or in the proceedings occurring prior to the judgment of the court confirming assessment of benefits and damages; but said judgment shall be conclusive that all prior proceedings were regular and according to law. In case any assessment shall be held to be void for want of notice, the said commissioners may, upon motion, be permitted to give such owner due notice and ask for a time to be set by the chancery court, or chancellor in vacation, for hearing any and all objections that said landowner may have to such proceedings and the assessment. The chancery court, or chancellor in vacation, at such time may make such orders in reference thereto as justice may require, and may assess such landowner his just proportion of the benefits received by him by such proposed work or the damages suffered by him by such proposed work; and thereupon such assessment as to such land shall be binding and conclusive.

SOURCES: Codes, Hemingway's 1917, § 4481; 1930, § 4502; 1942, § 4728; Laws, 1914, ch. 269.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Under the statute, it is clear that it was not the purpose of the legislature to discharge the drainage district lands from accruing of taxes during the period it is held by the state under a tax sale. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

While the state is not required to pay the taxes accruing on the land for drainage purposes, and such taxes are held in abeyance during the time it is held by the state, yet the taxes do accrue subject to the state's superior right, and when the state parts with its title, it does not free the land from such lien until the taxes are paid in full, and proceedings may be had under the statute to collect the assessments levied during the years when the state held the title, when the taxes were in abeyance. Waits v. Black Bayou Drainage Dist., 185 Miss. 626, 189 So. 103 (1939).

§ 51-29-107. Special commissioner may hear and determine cases under this chapter.

All hearings hereinbefore provided to be heard before the chancellor may be heard before a special commissioner who may be appointed by the chancellor, who shall have full authority to make all findings of law and of fact, and whose findings shall be reduced to writing and reported to the chancellor for confirmation either in term-time or in vacation. Such reports shall be subject to exceptions or objections, but no notice of the hearing of such exceptions shall be necessary, provided the date for hearing exceptions to the commissioner's report shall have been fixed in the order referring the matter to the commissioner. Such commissioner shall receive such compensation as may be allowed him by the chancellor.

SOURCES: Codes, Hemingway's 1917, § 4482; 1930, § 4503; 1942, § 4729; Laws, 1912, ch. 195.

Cross References — Power of chancellor to appoint master to hear and determine causes, see § 51-31-107.

§ 51-29-109. Expenses of chancellor to be paid by district.

As a part of the cost of the organization and conduct of a drainage district, the chancellor may tax his own traveling and hotel expenses in deciding all hearings provided for in this chapter, when such hearings are had before the chancellor in vacation. Such traveling expenses shall be paid to the chancellor upon his filing an itemized statement thereof with the said drainage commission.

SOURCES: Codes, Hemingway's 1917, § 4483; 1930, § 4504; 1942, § 4730; Laws, 1912, ch. 195.

§ 51-29-111. Method to apportion benefits when land is divided into smaller units of ownership.

In case assessment of benefits of a drainage district organized and operating under the provisions of this chapter is set up on the assessment roll of such drainage district by government survey subdivisions and any such land is thereafter conveyed so that the separate ownership thereof is in lesser quantities or units than that as set up on such assessment roll, or in case such assessed subdivision is divided into lesser fractions in its ownership so that there are several separate ownerships of the originally assessed subdivision and it is necessary that the said assessment and tax thereon be apportioned among the several owners thereof, the board of drainage commissioners in which such land is situated, at the request of any such owner or on its own motion, may by an order spread on its minutes apportion the assessment of benefit thereof to the several parts or fractions of such originally assessed government survey subdivision so as to provide on the assessment rolls for the particular land upon which the several owners thereof may pay the tax thereon; provided that the apportionment of such tax shall never increase or diminish the total assessment of such originally assessed government survey subdivision as set up on the assessment rolls of such district or impair in any wise the lien of the bonds or obligations of said district as issued against the same. Before any such change may be made, the clerk of the board of drainage commissioners shall give notice that such action is sought to be taken, which notice shall be published in a weekly newspaper published in the county in which such land is situated for three weeks preceding the meeting at which such action is to be taken. This notice shall state that it is proposed that such board will apportion the assessment of benefits as set up on the assessment rolls of the named drainage district on the date to be named at the place to be named, and shall carry a description of the lands to be affected as well as the name of the owner thereof as set up on said assessment roll. Such notice by publication, as provided herein, shall also be directed to all bondholders or persons interested in said drainage district or the lands embraced therein, and shall specifically give the date and place of said meeting. Upon the hearing of said matter before such drainage commissioners and all objections thereto, any party, person, firm, corporation, bondholder, other landowners within the drainage district, or persons in any wise interested or affected by the decision of such drainage commissioners in apportioning or refusing to apportion such assessment may appeal from the decision of such drainage commissioners by giving written notice to the said drainage commissioners within fifteen days after their decision. Such appeal shall be to the chancery court of the county in which the land involved shall be situated, and if the land involved is situated in more than one county, then to the chancery court of either county. When such appeal is requested by any party interested, it shall be the duty of the clerk of the board of drainage commissioners to file with the chancery clerk the petitions requesting the tax apportionment and all papers in connection with the cause, within thirty days after the request of said appeal, if made within the time hereinabove required. The chancery clerk shall file said papers and docket the case as any other cause in the chancery court, and it shall be heard accordingly. Costs shall be taxed as any other cases in the chancery court.

SOURCES: Codes, 1930, § 4505; 1942, § 4731; Laws, 1926, ch. 302.

§ 51-29-113. Clerk of district to certify order to tax collector.

Should an appeal not be perfected within fifteen days after the decision of the board of drainage commissioners, or upon the final decision of the courts upon appeal, it shall be the duty of the clerk of the drainage district to immediately certify a copy of said order to the tax collector, showing the change and apportionment of such assessments; and such tax collector shall be guided thereby in making future collections of such assessments and tax. Such change in such assessment as made shall be deemed in law to be the amount of such assessment and tax to be due on the land as fixed by such order, and such lands shall not thereafter be liable for any amount above its apportioned part thereof. Such tax collector may issue receipt upon the payment by any party of such amount as has been apportioned to be due on any subdivision of land under the provisions of this chapter.

SOURCES: Codes, 1930, § 4506; 1942, § 4732; Laws, 1926, ch. 302.

Cross References — Collection of taxes, delinquent lands, and settlements, see § 51-29-81.

§ 51-29-115. Formation of subdrainage districts.

Subdistricts may be formed under this chapter in the following manner: When one third of the landowners owning a majority of the acreage or a majority of the landowners owning a third of the acreage or real property within a proposed subdistrict, composed of lands wholly within a district or partly within and partly without such district, shall petition the chancery court to establish a subdistrict to embrace their property, describing generally the region which it is intended shall be embraced within the subdistrict, and shall file a good bond to pay for the expenses of the survey of the proposed subdistrict in case the district is not formed, it shall be the duty of the chancery court, or chancellor in vacation, to enter an order directing the commissioners of the main district to forthwith proceed to cause a survey to be made and to ascertain the limits of the region which will be benefited by a proposed system of improvements, giving a general idea of its character and the costs of drainage, and making such suggestions as to the size of the drainage ditches and their location as the commissioners may deem advisable, and to file their report with the clerk of the chancery court. All expenses of preparing such plans and estimates and costs of publication shall be paid by the board of supervisors, as the work progresses, upon proper showing by the commissioners of said district; but all expenses incurred by said subdistrict shall be repaid out of the proceeds of the first money received by the proposed subdistrict.

The clerk of the chancery court shall thereupon give notice by publication for two weeks by two insertions in some newspaper published in the county or counties in which said subdistrict will be located, calling upon all persons owning real property within said subdistrict to appear before the chancery court, or chancellor in vacation, on some day fixed by said clerk not less than ten days after the last publication to show cause in favor of or against the establishing of the subdistrict. If it shall appear to the court or chancellor that the organization of the proposed subdistrict will conduce to the public benefit and to the interest of real property therein, it shall make an order upon its records establishing said subdistrict. Nothing in this section shall be construed so as to prohibit the formation and organization of a drainage district wholly or partly within a district already organized. A district independent of the district already organized may be organized where a part or all of the lands are not in the district already organized, provided that a third of the landowners owning a majority of the acreage or a majority of the landowners owning a third of the acreage or real property within such proposed district shall petition the chancery court of any county of such district to constitute them a drainage district under the terms of this chapter, and thereupon proceedings shall be had in all respects in conformity with this chapter for the creation of a drainage district under its terms. When such a district is organized as now provided by law for the organization of drainage districts, it shall have all the rights, powers, and privileges of any other district, having its commissioners and other officers selected in the manner now provided by law; and such district shall have full power to make and levy assessments, issue bonds independent of any other district, and to do all other things now provided by law for the formation and organization of drainage districts. When any such district is organized, the several parcels of land thereof that are included within the corporate limits of any district shall still be liable to the district already organized for assessments for benefits thereafter levied, if any are received by them; and in like manner shall receive credit for any work done which is a benefit to the district already organized. The foregoing provisions of this chapter shall apply to the organization of the subdistrict, the same as to the organization of the district.

When the court or chancellor has established a subdistrict, he shall appoint the commissioners of the subdistrict; and the proceedings thereafter shall conform in all respects to the provisions of this chapter relating to the drainage district. Said commissioners are empowered and authorized to issue bonds of said subdistrict, and said bonds shall be designated as the bonds of said subdistrict; and all the foregoing provisions of this chapter in reference to the issuance of the bonds of said drainage district shall apply to and govern the issuance of bonds of each particular subdistrict. The proceeds of the sale or money obtained on the bonds of any subdistrict shall be used and applied exclusively to the work of constructing and maintaining the internal drains of said subdistrict in the carrying out and perfecting its internal drains. Separate accounts shall be kept by the treasurer and depositories of said commission with each subdrainage district, so that there can be seen at all times the exact financial condition of each subdistrict, both as to its receipts and disbursements.

SOURCES: Codes, Hemingway's 1917, § 4484; 1930, § 4511; 1942, § 4737; Laws, 1916, ch. 243; Laws, 1920, ch. 288.

Cross References — Authorization for sub-drainage districts, see § 51-31-119.

JUDICIAL DECISIONS

1. In general.

Funds of subdrainage district, embracing lands lying entirely within but not co-extensive with boundaries of original drainage district, cannot be expended upon canals of parent district, and method of ascertainment by commissioners of amount of money necessary to be expended by subdistrict which includes this factor is not proper. Hall v. Brown's Creek Sub-Drainage Dist. No. 1, 206 Miss. 869, 41 So. 2d 46 (1949).

Extension embracing lands fifty miles away from original district, held unauthorized; Adjacent lands are those near enough to be benefited by annexation. McLemore v. Yocona Tallahatchie Drainage Dist. No. 1, 129 Miss. 97, 91 So. 390 (1922).

§ 51-29-117. Manner of appeal.

Whenever an appeal is allowed to be prosecuted under this chapter, the same shall be taken within the time fixed by this chapter. If the appeal be from an order of the board of supervisors, same shall be perfected in the same manner as an appeal from orders of the board of supervisors approving tax assessment. If the appeal be from an order of the chancery court or chancellor in vacation, such appeal shall be prosecuted in like manner as is provided by law for the prosecution of appeals from other decrees of said court, but must be within the time fixed by this chapter for appealing.

No appeal herein provided for shall be allowed to delay the organization of the district, or the progress of the work or improvement.

SOURCES: Codes, Hemingway's 1917, §§ 4475, 4486; 1930, §§ 4496, 4512; 1942, §§ 4722, 4738; Laws, 1912, ch. 195.

RESEARCH REFERENCES

CJS. 28 C.J.S., Drains §§ 137, 138 et seq.

§ 51-29-119. Additional powers given to certain drainage districts.

Any drainage district operating under the provisions of this chapter, having as its purpose and object a comprehensive and general plan to control overflow and surplus water of rivers and their tributaries, is hereby given the power, in addition to the foregoing powers given by this chapter, to construct and maintain by-passes for conveying surplus and overflow waters by means of ditches, canals, floodways, levees, conduits, or other artificial means by shorter and more direct route from tributaries of natural streams and their watersheds to their main water course, and from one point in a natural water course to another point therein. However, said by-passes, ditches, canals, floodways, levees, or conduits shall empty the water directly into the same watercourse to which it would naturally flow.

SOURCES: Codes, 1930, § 4513; 1942, § 4739; Laws, 1924, ch. 257.

JUDICIAL DECISIONS

1. In general.

A landowner has no perpetual right to the continuance of a crossing of a drainage canal separating parts of his property; but merely a right to compensation where no crossing is provided. Beaver Dam Drainage Dist. v. McClain, 241 Miss. 865, 133 So. 2d 615 (1961).

Under this section [Code 1942, § 4739], drainage districts have authority so to construct canals and drains that a landowner whose lands are divided thereby may cross them with farm vehicles, in order to lessen the severance damages. Beaver Dam Drainage Dist. v. McClain, 241 Miss. 865, 133 So. 2d 615 (1961).

Alterations in a drainage canal which render unusable a crossing from one part of a landowner's property to another are ground for compensation. Beaver Dam Drainage Dist. v. McClain, 241 Miss. 865, 133 So. 2d 615 (1961).

Although a drainage district has no power to make a contract with an engineer for a survey in preparation to engaging in a reclamation project, it has the implied power to do so. Moorhead Drainage Dist. v. Pedigo, 210 Miss. 284, 49 So. 2d 378 (1950).

Ditches through watershed in district held authorized. Toler v. Bear Creek Drainage Dist., 141 Miss. 851, 106 So. 88 (1925).

§ 51-29-121. Assessments to be apportioned when land lies in certain districts.

Whenever such districts include within their boundaries land already included in an existing drainage district, such land in the existing district shall remain liable for benefits already assessed or that may thereafter be assessed by such existing district, and shall also be liable to be assessed for benefits by the new district as now provided by law; but such land in an existing district may, for any of its improvements used by the new district, be given credit against the assessment of benefits levied by the new district to the amount of its pro rata portion of all the bonded and outstanding indebtedness, including interest to accrue upon such bonds and indebtedness of such existing district.

SOURCES: Codes, 1930, § 4514; 1942, § 4740; Laws, 1924, ch. 257.

Cross References — Court order for assessments and levies to cover cost of improvement, see § 51-29-45.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 88 et seq.

§ 51-29-123. Certain districts may own rights of way and dispose of same.

Such district shall have the right to acquire and own in fee simple, within the confines of such district, all necessary rights of way for floodways, by-passes, ditches, canals, levees, and other necessary work or improvements, by purchase or condemnation as now provided by law within the district; and it may sell, lease, or otherwise dispose of same, subject to drainage purposes and easements of the district, or it may rent or lease for cash, or part of crops, such parts of its right of way as are susceptible of growing and producing crops, the income therefrom to be used for the maintenance of the improvements of the district.

SOURCES: Codes, 1930, § 4515; 1942, § 4741; Laws, 1924, ch. 257.

JUDICIAL DECISIONS

1. In general.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and powers and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

While tenants in common may be required to bear their proportionate share of expenditures and disbursements and to pay off proportionately the purchase price for outstanding titles and claims, a drainage district has not the power to spend funds to meet these obligations as a tenant in common with others. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 34.
CJS. 28 C.J.S., Drains § 75.

§ 51-29-125. Certain districts may acquire rights of way through existing districts.

Such districts may acquire such rights of way through existing drainage districts, after obtaining consent of an existing district and upon such terms as the existing district may impose, but when the works or improvements of an existing district are so acquired, the district acquiring shall furnish and provide equivalent relief or protection to that destroyed or impaired by such taking. If not determined by mutual agreement by the commissioners of the districts or landowners, either district may petition the board of supervisors, chancellor, or chancery court having jurisdiction to investigate, determine, and adjudicate what damages shall be paid, or what work or relief shall be done or provided by the new district. Such judgment may be enforced by mandamus, as now provided by law, and all existing rights of landowners in an existing district shall be protected and cared for by such new district. An appeal shall lie from such order as provided by this chapter. Such district may use any ditch, levee, or other improvements of an existing drainage district with the consent of the commissioners thereof, and upon such terms, conditions, stipulations, and price as may be made by such existing drainage district.

SOURCES: Codes, 1930, § 4516; 1942, § 4742; Laws, 1924, ch. 257.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 34.
CJS. 28 C.J.S., Drains § 75.

§ 51-29-127. Districts acquiring certain lands to assume obligations.

When lands in an existing district, and which have been assessed for benefits, are acquired for rights of way by such districts for canals, ditches, levees, floodways, by-passes, or other necessary drainage purposes, assessments already levied or that may be levied against such land to pay its proportion of outstanding bonds or other obligations of the existing district, including all interest to accrue thereon, shall be assumed and paid by the new district so taking or so acquiring such land, in the proportion that its value, as fixed by condemnation, shall bear to the value of the land included in the entire district.

SOURCES: Codes, 1930, § 4517; 1942, § 4743; Laws, 1924, ch. 257.

§ 51-29-129. Law with reference to disposition of waters.

Nothing contained in Sections 51-29-119 through 51-29-129 shall be construed to permit the enlargement of any prescriptive rights now or hereafter existing or acquired, nor permit the diversion of water from one watershed or basin to another watershed or basin. Nor shall said sections apply to or affect, change, modify, or alter the law as now existing relative to the diversion and control of seep water, and they shall not be construed to repeal, amend, or modify any existing laws, but shall be deemed as supplemental to the law as it now exists.

SOURCES: Codes, 1930, § 4518; 1942, § 4744; Laws, 1924, ch. 257.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4744] was not violated by the construction of ditches across a drainage district, through a divide or watershed therein, which ditches were a necessary part of a larger scheme to protect the land on both sides ordinarily drained by a creek on either side from periodical overflow from one of the creeks, the waters flowing over the divide for several months each year. Toler v. Bear Creek Drainage Dist., 141 Miss. 851, 106 So. 88 (1925).

§ 51-29-131. Enlargement of boundaries of drainage districts.

If ten per cent of the landowners owning lands adjoining or adjacent to any existing district operating under the provisions of this chapter shall petition the chancery court to extend the boundaries of any such existing district, describing generally the region which it is intended shall be embraced within the boundaries of such drainage district as extended, it shall be the duty of the chancery court, or chancellor in vacation, to enter an order directing the commissioners of such drainage district to forthwith proceed to cause a survey to be made, and to ascertain the limits of the region which will be benefited by the proposed system of improvements, giving a general idea of its character and the cost of drainage and other improvements necessary and making such suggestions as to the size of the drainage ditches and their location and of levees, dams, and pumping stations, if any of such be necessary, to properly drain and protect said territory, or if the commissioners may deem such levees, dams, pumping stations, or any or either of them advisable, and to file their reports with the clerk of the chancery court. All expenses of making such survey, preparing the plans and estimates of the costs of the improvements, costs of publication, attorneys' fees, and other necessary expenses shall be paid as the work progresses by the existing drainage district to which the land and territory is proposed to be added, or by the board of supervisors as the court or chancellor may order. All such expenses shall be repaid out of the first money received from taxes upon the additional lands embraced in such drainage district, or from the sale of bonds from the district as extended, if that be done; but if that be not done, then the board of supervisors shall levy an ad valorem tax upon the land which it was proposed to add to such existing drainage district to repay the costs advanced by such existing drainage district or the board of supervisors, as the case may be.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487a; 1930, § 4519; 1942, § 4745; Laws, 1920, ch. 281.

JUDICIAL DECISIONS

1. In general.

Chancery court has no jurisdiction to assess land not adjoining or adjacent to original district. Yocona Tallahatchie Drainage Dist. No. 1 v. Love, 136 Miss. 760, 101 So. 684 (1924).

Extension embracing land 50 miles away held unauthorized. McLemore v. Yocona Tallahatchie Drainage Dist. No. 1, 129 Miss. 97, 91 So. 390 (1922).

Adjacent lands are those benefited by annexation. McLemore v. Yocona Tallahatchie Drainage Dist. No. 1, 129 Miss. 97, 91 So. 390 (1922).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 15.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 22-24 (extension of district boundaries).

CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-29-133. Notice and hearing of proposed extension.

When such reports are filed, the clerk of the chancery court shall thereupon give notice for two weeks by two insertions in some newspaper published in the county or counties in which the land proposed to be included in and added to the existing drainage district is located, calling upon all persons owning the land within the said territory to appear before the chancery court, or chancellor in vacation, not less than ten days after the last publication of said notice to show cause in favor of or against the extension of the boundaries of said district so as to include and embrace their lands therein. If it shall appear to the court or chancellor that the extension of the boundaries of said drainage district, so as to include the additional territory and the construction of the proposed improvements, will be conducive to the public health, to the public benefit, and to the interest of the land and the owners thereof, he shall enter an order extending the boundaries of said drainage district so as to embrace and include said territory, and establishing the same as a part of said existing drainage district.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487b; 1930, § 4520; 1942, § 4746; Laws, 1920, ch. 281.

§ 51-29-135. Extension of district on majority petition.

If the majority of the landowners owning one third of the acreage of the lands or one third of the landowners owning a majority in acreage of the lands proposed to be added to the existing drainage district shall petition the chancery court of any county in which any part of the land lies to extend the boundaries of the existing drainage district so as to embrace and include their lands, proceedings shall be held in all respects in conformity with the provisions of this chapter.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487c; 1930, § 4521; 1942, § 4747; Laws, 1920, ch. 281.

§ 51-29-137. Rights and powers of extended district.

When the boundaries of the existing drainage district are extended so as to embrace and include additional territory and land, said district shall have all the rights, powers, and privileges so far as said land is concerned as said district had of the lands originally embraced and included therein, and shall have full power to make and levy assessments thereon and to issue additional bonds, as is now provided by law for the formation and organization of drainage districts under the provisions of this chapter. When the boundaries of any existing drainage district are extended and additional lands and territory added thereto to be drained and improved, the several parcels of land of such drainage districts as were included within the limits of the district as originally organized and formed shall be liable to the district as already organized for assessments of benefits to be thereafter levied, if any benefits are received by them; and in like manner shall receive credit for any work done or improvements made or constructed by the district as already organized, which will benefit the land and territory added thereto in the manner herein provided.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487d; 1930, § 4522; 1942, § 4748; Laws, 1920, ch. 281.

§ 51-29-139. Extension may include lands of other drainage districts.

Nothing contained in Sections 51-29-131 through 51-29-143 shall be construed as preventing the inclusion, in the boundaries of the drainage district to be extended, of any lands embraced in any other existing drainage district. Any such lands shall be and remain liable to the drainage district in which such land is located for assessments for benefits thereafter levied, by the new district as extended, if any benefits are received by them; and in like manner shall receive credit for any work done, or improvements made, which will benefit the land added to the drainage district as extended.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487e; 1930, § 4523; 1942, § 4749; Laws, 1920, ch. 281.

§ 51-29-141. Separate accounts kept for extended districts.

Separate accounts shall be kept by the treasurer and depositories for such extended districts, so as to show receipts and disbursements from and on account of the land embraced in the district as originally formed, and also from the land embraced in the territory added to such districts.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487f; 1930, § 4524; 1942, § 4750; Laws, 1920, ch. 281.

§ 51-29-143. Provisions applicable to extended districts.

All the provisions of this chapter shall apply to the organization and operation of extended existing drainage districts, as authorized by the provisions of Sections 51-29-131 through 51-29-143, in so far as the same are or can be made applicable.

SOURCES: Codes, Hemingway's 1921 Supp. § 4487g; 1930, § 4525; 1942, § 4751; Laws, 1920, ch. 281.

§ 51-29-145. Consolidation of districts.

The board of commissioners of any drainage district of the State of Mississippi organized and existing under and by virtue of this chapter, which embraces lands in three or more counties in the State of Mississippi and which supplies an outlet for the water of three or more drainage districts draining tributary streams, in its discretion may, by resolution adopted at any meeting of said board and spread upon its official minutes, declare its proposal and intent to combine the territory of all of the drainage districts for which it supplies a drainage outlet, hereinafter referred to as tributary drainage districts, with the territory of the district supplying said outlet so as to form a single consolidated drainage district embracing the territory of all of the said drainage districts to be under the governing authority of a single board.

The same discretionary authority shall also be vested in the board of commissioners of a drainage district of the State of Mississippi meeting the following qualifications:

(a) That it was organized and is existing under and by virtue of this chapter;

(b) That it is located in two counties in the State of Mississippi, one of which has a population in accordance with the last previous federal census of less than 20,000 and an assessed value on the basis of the 1930-1954 assessment rolls placing it in class 5, and the other of which has a population of less than 20,000 and an assessed value on the basis of the 1930-1954 assessment rolls placing it in class 6, where the combined area of all the drainage districts proposed to be consolidated is less than 24,000 acres; and

(c) That it supplies an outlet for the water of one or more drainage districts through which there runs a continuous drainage canal shared by said districts and providing a combined drainage system for said districts.

Also, the same discretionary authority is vested in the board of drainage commissioners of any drainage district of the State of Mississippi located in one or more counties meeting only the qualifications of subsection (a) of this section whose drainage canal supplies an outlet for the water of one or more tributary drainage districts.

SOURCES: Codes, 1942, § 4752-01; Laws, 1950, ch. 430, § 1; Laws, 1958, ch. 458; Laws, 1960, 178.

JUDICIAL DECISIONS

1. In general.

A drainage canal previously constructed by a constituent district becomes an asset of the consolidated district. Carter v. Chuquatonchee Consol. Drainage Dist., 218 So. 2d 30 (Miss. 1969).

§ 51-29-147. Petition and notice of consolidation.

Upon the adoption of such resolution, the said board of commissioners of said drainage district may file its petition in the chancery court of any one of the counties in which it embraces land, requesting said court, or the chancellor thereof in vacation, to set a date for a hearing upon said proposal, either in term time or vacation, not less than three weeks after the date of the decree fixing the same, and to direct the clerk of said court to give notice of the time, date, and place of such hearing by publication at least once each week for two consecutive weeks. Such notice shall be published in a newspaper or newspapers having general circulation in each of the counties in which any of said districts shall embrace land, the date of the first publication to be not less than ten days prior to the date set for said hearing. Said notice shall be addressed to the officials, landowners, taxpayers, and other persons interested in said drainage districts proposed to be affected by said consolidation, shall contain a statement that written protests or objections to the proposed consolidation may be filed with the clerk of said court at any time prior to the date set for said hearing, and shall state that a failure to so file such written protest or objection prior to said date shall forever bar and preclude such protest or objection. Said notice may be in substantially the following form:

NOTICE

TO THE OFFICIALS, LANDOWNERS, AND TAXPAYERS OF, AND OTHER PERSONS INTERESTED IN (Here name all of the drainage districts proposed to be affected):

Notice is hereby given that the Board of Commissioners of (here insert name of the drainage district making the proposal) has filed its petition in the Chancery Court of ________ County, Mississippi, proposing to combine the territory of (here insert names of tributary drainage districts proposed to be consolidated) with that of said (drainage district making proposal), so as to form of such combined territory a single consolidated drainage district embracing the territory of all of said districts, under the governing authority of a single Board of Commissioners to be appointed by said court (or chancellor in vacation), said proposed consolidated drainage district to have all of the power and authority of a drainage district organized and existing under Chapter 29, Title 51, Mississippi Code of 1972.

Notice is further given that said matter has been set for hearing by the Chancery Court of ________ County, Mississippi (or the chancellor thereof in vacation, as the case may be) at ________ o'clock ________ M. on the day of ________ 20____, at the county court house at ________, Mississippi; and that any official, landowner or taxpayer of, or other person interested in any of the aforesaid drainage districts, who desires to oppose such proposed consolidation, must file his protest or objection in writing with the clerk of said court prior to said date set for said hearing, and that a failure to do so before said date forever will preclude and bar such protest or objection.

Witness my hand and seal of office, this ________ day of ________ 20____

____
Clerk of the Chancery Court of
________ County, Mississippi.

SOURCES: Codes, 1942, § 4752-02; Laws, 1950, ch. 430, § 2.

§ 51-29-149. Consolidation hearing and decree.

At said hearing, the court or chancellor in vacation, as the case may be, shall hear the written protests and objections against the proposed consolidation of said districts, if any be filed prior to the date set for said hearing; and unless, prior to said date of hearing, a majority of the landowners of said districts proposed to be consolidated, owning half or more of the combined land of said districts, shall have filed their written protests or objections against said proposed consolidation, shall enter a final decree, which shall have the force and effect of a judgment, consolidating said districts into a single drainage district embracing the combined territory of all of said several districts. The consolidated drainage district so formed shall have all of the power and authority of a drainage district organized under the provisions of this chapter, and shall have full, complete, and exclusive jurisdiction over such combined territory and of the complete and integrated systems of drainage of the said districts so consolidated. Any person aggrieved by said decree may appeal to the supreme court within twenty days after the date thereof.

SOURCES: Codes, 1942, § 4752-03; Laws, 1950, ch. 430, § 3.

§ 51-29-151. Commissioners of consolidated district.

In the event of such consolidation as provided in Sections 51-29-145 through 51-29-157, the court or chancellor in vacation immediately shall proceed to name said consolidated district, and to appoint to govern the same a board of commissioners to consist of five members, three of whom shall constitute a quorum for the transaction of business, and who shall possess the same qualifications now required by law for drainage commissioners. Two of such commissioners shall be appointed for a term of two years, two for terms of four years, and one for a term of six years, and all shall serve until their successors are appointed. Upon the expiration of the initial term of any commissioner, his successor shall serve for a term of six years and until his successor is appointed. The commissioners so appointed shall take and subscribe the oath required by law, and enter into bond for the faithful performance of their duties in a penalty to be fixed by the court or chancellor, to be approved by the clerk of said court.

SOURCES: Codes, 1942, § 4752-04; Laws, 1950, ch. 430, § 4.

§ 51-29-153. Transfer of powers of former commissioners.

When said board of commissioners of said consolidated district have been appointed and have qualified as required by law, the several boards of commissioners of the said separate drainage districts shall cease to exist, and their power and authority shall terminate. They shall be divested of all of the power and authority theretofore vested in said several boards of commissioners, and all of their said power and authority and jurisdiction in respect to the territory and drainage improvements of their said respective separate districts shall vest in, and thereafter be exercised by, said board of commissioners of said consolidated district.

SOURCES: Codes, 1942, § 4752-05; Laws, 1950, ch. 430, § 5.

§ 51-29-155. Lien of outstanding obligations not impaired by consolidation.

Nothing in Sections 51-29-145 through 51-29-157, nor in any proceedings had under the provisions thereof, shall have the effect of impairing, releasing, or abrogating the lien of the principal of, or interest on, any outstanding bonds, notes, or other obligations of any of the said several drainage districts referred to herein. Such liens are hereby expressly retained and preserved, and the property of any of said drainage districts having any such bonds, notes, or other obligations outstanding at the time of said consolidation shall continue and remain liable for taxation as theretofore for the payment thereof as the same mature and become due. It shall be the duty of said board of commissioners of said consolidated district annually to cause to be levied taxes against said property in any such district, sufficient to pay and discharge any such bonds, notes, or other obligations of such district as they mature and become due.

SOURCES: Codes, 1942, § 4752-06; Laws, 1950, ch. 430, § 6.

§ 51-29-157. Powers and authority of consolidated district.

Said consolidated drainage district shall have the same authority, power and jurisdiction over the combined territory of said separate districts, and over the integrated system of drainage thereof, as if it were a district organized and existing under and by virtue of this chapter. Such district shall have the further and additional power, authority, and jurisdiction to assess said combined territory, or any part thereof, with additional benefits and to levy taxes thereon for the purpose of raising money to preserve the said integrated system of drainage thereof, to clean out, widen, maintain, extend, deepen, and maintain the main and lateral canals thereof, and to construct such other and new canals as the board of commissioners of said consolidated drainage district may find advantageous to the efficient drainage of the said combined territory. In the exercise of said authority, power, and jurisdiction, said consolidated drainage district shall not be bound by any assessment previously made in any of said separate drainage districts, and may assess the said combined lands with benefits without regard to any former assessment of benefits in any separate district. In making said assessments, levying taxes, and in exercising its authority, jurisdiction, and control, said consolidated drainage district shall, insofar as the same is not inconsistent with Sections 51-29-145 through 51-29-157, follow the procedures which shall have the effect provided by this chapter.

SOURCES: Codes, 1942, § 4752-07; Laws, 1950, ch. 430, § 7.

§ 51-29-159. Mineral leases.

The board of commissioners of any drainage district heretofore and hereafter organized under the provision of this chapter are hereby authorized and empowered, in their discretion, to lease lands owned by the drainage district for oil, gas, and mineral exploration and development upon such terms and conditions and for such consideration as the board of commissioners of said district, in their discretion, shall deem proper and advisable.

Every such lease shall empower the lessee to enter upon the premises leased and to explore and develop such premises for oil, gas, or either of them, or such other minerals as may be included in the terms of said lease, and do all things necessary or expedient for the production and preservation of any such products.

All rentals, royalties, or other revenue payable under any leases executed pursuant to this section shall be paid to and collected by the treasurer of such drainage district, deposited in the drainage district fund, and used and expended in the same manner and subject to the same restrictions as provided by law in the case of other money belonging to such drainage district.

Any lease executed pursuant to this section shall inure to the benefit of the lessee named therein, his heirs and assigns, and in case the lessee be a corporation, to such lessee and its assigns.

SOURCES: Codes, 1942, § 4752.5; Laws, 1950, ch. 420, §§ 1-4.

§ 51-29-161. Reforestation procedure.

The owner or owners of any tract or tracts of land situated within the boundaries of any drainage district that embraces land in more than one county of the state and was organized under this chapter may, in event the

United States government, any agency or instrumentality thereof, or any corporation organized under an Act of the Congress of the United States for the purpose of engaging in any reforestation activity accepts a proposal of said owner or owners for the sale thereof, file a petition in the chancery court of the county in which the drainage district was organized, describing therein the tract or tracts of land in said district on which the proposal of said owner or owners for sale as aforesaid has been accepted as said tract or tracts are described in the assessment roll of the district, stating the total amount of assessments of benefits against each said tract and also the total amount thereof remaining unpaid at the time of the filing of such petition, and praying an acquittance of said tract or tracts from all outstanding indebtedness and assessments of benefits of said district whatever and a release thereof from the boundaries of said district on payment of the total amount of assessment of benefits of said district against said tract or tracts remaining unpaid on the filing of such petition. Thereupon the clerk of such chancery court shall issue notices, addressed to all the landowners of said district and to all holders of the outstanding indebtedness of said district, of a hearing on such petition at the next succeeding term of said court or in vacation at a time and place to be fixed by the chancellor, which notice shall be published in a weekly newspaper having a bona fide circulation in each county, any part of which is included within the boundaries of such district, for two successive issues.

SOURCES: Codes, 1942, § 4753; Laws, 1935, ch. 53.

Cross References — Donation of land to state by drainage district, see § 55-3-17.

§ 51-29-163. Hearing on reforestation petition.

At said hearing, if said owner or owners shall have then paid over to the chancery clerk the amount set out in said petition and if all of the holders of not less than 95% in amount of the outstanding original indebtedness of the district and all of the holders of outstanding refunding bonds of said district shall have signified in writing, filed with the clerk of said court, their consent to receive the sum so paid as a credit on the said outstanding indebtedness held by them, the chancellor shall determine whether said amount is the true amount of the assessment of benefits of said district against said tract or tracts then remaining unpaid, whether or not the release of said tract or tracts as prayed for will interfere with the continued functioning of the improvements of said district, and whether or not the proposal of sale as set out in said petition is submitted in good faith and accepted as aforesaid. In event it is found that the sum tendered was the true amount of the assessments of benefits of said district against said tract or tracts remaining unpaid, that a release of said tract or tracts will not interfere with the continued functioning of the improvements made by said district, and that the proposal of sale as set out in said petition was submitted in good faith and accepted as aforesaid, the chancellor shall order an acquittance of said tract or tracts from liability for all the outstanding indebtedness of said district and release said tract or tracts from the boundaries of said district, on condition that the sale so proposed and accepted be consummated and a deed to said tract or tracts be delivered to the United States government, to any agency or instrumentality thereof, or to any corporation organized under an Act of the Congress of the United States for the purpose of engaging in reforestation activities. The effect of such order shall be to render said tract or tracts of land, on delivery of said deed, as fully free of any obligation, lien, or incumbrance arising from its inclusion in said district as if said tract or tracts had never been within said district.

SOURCES: Codes, 1942, § 4754; Laws, 1935, ch. 53.

§ 51-29-165. Disposition of proceeds of reforestation release.

On the rendition of said order the chancery clerk shall pay over to the board of commissioners of said district the amount so paid in to him, which amount shall be held in a special fund to be deposited with the depository of said district under all protections now provided by law for the deposit of funds of drainage districts. Said special fund shall only be withdrawn thereafter in annual installments of the exact amount of the tax which would have been raised by the levy for the year in question from said tract or tracts, had same not been released from the district, and used by the commissioners only in payment of outstanding indebtedness of the district. However, if the holder or holders of the outstanding indebtedness of the district chargeable against the assessed benefits thereof consent to the release of said land or lands from the district, the sum so paid by the landowners shall be paid to such consenting holders of said indebtedness and immediately credited thereon.

SOURCES: Codes, 1942, § 4755; Laws, 1935, ch. 53.

CHAPTER 31

Drainage Districts with County Commissioners

Sec.
51-31-1. Powers of drainage districts.
51-31-3. Definitions.
51-31-5. General authority of drainage districts.
51-31-7. Exercise of authority.
51-31-9. Selection of county drainage commissioners.
51-31-11. Oath and bond of drainage commissioners.
51-31-13. Compensation of commissioners.
51-31-15. Quorum.
51-31-17. Secretary and treasurer of drainage districts.
51-31-19. Employment of counsel.
51-31-21. Creation of drainage districts on petition.
51-31-23. Jurisdiction of organization.
51-31-25. Notice of petition.
51-31-27. Date of hearing.
51-31-29. Hearing of petitions.
51-31-31. Landowners may sign petition at hearing.
51-31-33. Commissioners to estimate cost.
51-31-35. Proceedings on report of commissioners.
51-31-37. Disposition of report.
51-31-39. Form of court's order.
51-31-41. District declared organized.
51-31-43. Preliminary expenses.
51-31-45. Assessment roll.
51-31-47. Notice of assessments.
51-31-49. Hearing objections.
51-31-51. Assessments confirmed.
51-31-53. Payment of assessments.
51-31-55. Right of way agreements.
51-31-57. Notice of appraisement by commissioners.
51-31-59. Appraisement hearing.
51-31-61. Levy to provide estimated funds.
51-31-63. Tax levied to meet assessment.
51-31-65. Levy each year to meet bond obligations.
51-31-67. Reassessments in case of underestimates.
51-31-69. Sale of district bonds.
51-31-71. Contracts let to lowest bidder.
51-31-73. Commissioners to construct and maintain drains.
51-31-75. Lateral ditches to be laid out.
51-31-77. Actual damages recoverable.
51-31-79. Jurisdiction of drainage commissioners.
51-31-81. Annual reports.
51-31-83. Commissioners may go on lands.
51-31-85. Ditches already constructed may be used.
51-31-87. Compensation for use of other district drains.
51-31-89. Passing railroads with canal.
51-31-91. Notice and damages.
51-31-93. Railroad may be assessed for benefits.
51-31-95. Drain may cross public road.
51-31-97. Landowners outside of district may use drains.
51-31-99. Reassessment if estimate deficient.

51-31-101. Penalty for injuring drains.
51-31-103. Benefit to county farm.
51-31-105. Jurisdiction of suits.
51-31-107. Master may hear and determine causes; report of findings to chancellor.
51-31-109. Expenses of chancellor and master taxed against district.
51-31-111. Additional bond issue.
51-31-113. Interest rate of additional bonds.
51-31-115. Notice of issue to be published.
51-31-117. Proceedings in rem.
51-31-119. Subdrainage districts authorized.
51-31-121. Notice of subdistrict proceedings.
51-31-123. Creation of subdistrict.
51-31-125. Subdistricts managed by drainage commissioners.
51-31-127. Separate financial account kept for subdrainage district.
51-31-129. Collection of taxes.
51-31-131. Delinquent lands.
51-31-133. Tax lists.
51-31-135. Record of tax sales.
51-31-137. Expiration of redemption period.
51-31-139. District placed under supervisors.
51-31-141. Procedure for districts to come under this chapter.
51-31-143. Drainage law construed.

§ 51-31-1. Powers of drainage districts.

Each drainage district heretofore organized in this state and each drainage district hereafter organized therein shall be a body corporate, shall have authority to sue in its own corporate name and be sued therein, may contract and be contracted with, may plead and be impleaded, and where organized or operating under the provisions of this chapter in its name may do and perform any and all things necessary and authorized by this chapter. All such acts may be done by its commissioners in the name of the district.

As an alternative to any existing right, power, and authority given to any drainage district operated by a board of county drainage commissioners, or to such commissioners, by the laws of the State of Mississippi now or hereafter enacted, all the provisions of the statutes of the State of Mississippi now or hereafter enacted relative to drainage districts operated by local commissioners, and to such local commissioners, shall apply to any drainage district heretofore or hereafter organized and operated by a board of county drainage commissioners, and to such commissioners.

SOURCES: Codes, 1906, § 1707; Hemingway's 1917, § 4295; 1930, § 4401; 1942, §§ 4606, 4606.8; Laws, 1964, ch. 209, eff from and after passage (approved April 23, 1964).

Cross References — Transfer of funds from drainage district to master water management district, see § 51-7-49.

Drainage districts with local commissioners, see § 51-29-1 et seq.

Rights, duties, and powers of drainage commissioners, see § 51-29-19.

Additional powers given to certain drainage districts, see § 51-29-119.

Additional powers of drainage districts, see § 51-33-1 et seq.

Power of drainage districts to borrow money for repairs and restoration, see § 51-33-27.

Use of drains for irrigation, see §§ 51-33-33, 51-33-35.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Rule 81 of Mississippi Rules of Civil Procedure.

JUDICIAL DECISIONS

1. In general.

Drainage districts have no power other than given them by the statutes. Beaver Dam Drainage Dist. v. McClain, 241 Miss. 865, 133 So. 2d 615 (1961).

Revenue agent held not authorized to bring suit on behalf of drainage district. Robertson v. Thomas, 118 Miss. 423, 79 So. 289 (1918).

Drainage district is a "corporation" with power to sue and be sued, and is not a "part of a county." Robertson v. Thomas, 118 Miss. 423, 79 So. 289 (1918).

ATTORNEY GENERAL OPINIONS

A municipality may perform work on private property in order to alleviate flooding on city streets and to correct drainage problems in the city provided the governing authorities find consistent with fact that to do so will promote the health, comfort and convenience of the inhabitants of the municipality. Power, Nov. 14, 1991, A.G. Op. #91-0762.

Other than specific situations specified by statute, there is no statutory authority which would permit a municipality to enter into an interlocal agreement with a county whereby the two entities could jointly carry out the flood control and drainage activities on the described property; the best course of action may be for the city and county to pursue local and private legislation approving the property in question as an industrial park and authorizing the work necessary to address the potential flooding issue. Prichard, January 15, 1998, #97-0784.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 6.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:1 et seq.

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-31-3. Definitions.

The terms "benefits" and "betterments," as used in this chapter are interchangeable and shall be construed as synonymous. The terms "ditches" and "drains" shall be construed to also include levees and closed drains, such as tiling, as well as open ditches.

SOURCES: Codes, Hemingway's 1917, § 4324; 1930, § 4423; 1942, § 4628; Laws, 1912, ch. 196.

§ 51-31-5. General authority of drainage districts.

Drainage districts may hereafter be organized in this state under the provisions of this chapter for the purpose of reclaiming wet, swamp, or overflowed lands for agricultural and sanitary purposes conducive to public health in the manner hereinafter provided and, when so organized, shall consist of a system of artificial main drains, lateral drains or ditches, natural drains and water courses, or levees. To the end that the purposes of the organization of such districts according to this system may be attained, they shall have and are given full power and authority to construct or to cause to be constructed such artificial main drains and ditches, lateral drains and ditches, and tile drains over the lands of others or over or on lands which may be acquired by said district, and to alter, deepen, or improve any and all natural drains and water courses as it may be necessary to alter, deepen, or improve so that a complete system of such drains may exist in the district for agricultural and sanitary purposes. Such districts may also, in addition to the construction of such drains, construct or erect over the land of others, or over the lands to be acquired by the drainage district or commission for that purpose, such levees as may be necessary to protect or reclaim any lands from overflow from any source.

SOURCES: Codes, 1906, § 1683; Hemingway's 1917, § 4264; 1930, § 4374; 1942, § 4579; Laws, 1924, ch. 266.

Cross References — Rights, duties, and powers of drainage commissioners, see § 51-29-19.

Additional powers of existing drainage districts, see § 51-33-1 et seq.

Power of drainage district to borrow money for repairs and restoration, see § 51-33-27.

JUDICIAL DECISIONS

1. In general.

Drainage districts invested with certain necessary governmental powers are political subdivisions of state. Standard Oil Co. v. National Sur. Co., 143 Miss. 841, 107 So. 559 (1926); Mississippi State Hwy. Comm'n v. Yellow Creek Drainage Dist., 181 Miss. 651, 180 So. 749 (1938).

Drainage Act, Code 1906, ch. 39, § 1683, as amended by Hemingway's Code, § 4264, was not a local, private or special law relating to water courses. Witty v. Ellsberry Drainage Dist., 126 Miss. 645, 89 So. 268 (1921).

Prior to enactment of Hemingway's Code, § 4290, commissioners (organized under §§ 1683 et seq., Code 1906, §§ 4264 et seq. Hemingway's Code), had no power to reassess for additional work not included in the estimate. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

Contract for additional work must be made in the manner provided by law to authorize reassessment. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

Commissioners had no authority to pay increased cost caused by change in plans after apportionment of cost. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

CJS. 28 C.J.S., Drains §§ 2 et seq.

§ 51-31-7. Exercise of authority.

All drainage districts of the state heretofore organized or that may be hereafter organized, except as otherwise provided in Chapters 29 and 33 of this title, shall severally exercise their respective powers and be managed by three county drainage commissioners of the county in which the organization of the district was had and by the chancery court or chancellor in vacation of such county, as hereinafter provided in this chapter.

SOURCES: Codes, 1930, § 4371; 1942, § 4576.

Cross References — Districts with local commissioners generally, see § 51-29-1 et seq.

Flood control by drainage districts generally, see § 51-31-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.

1. In general.

Drainage districts are governmental agencies as well as private enterprises. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Drainage districts are organized and conducted, not alone for the purpose of reclamation of wet and overflowed lands in order to promote agriculture, but, in addition, to conserve the public health. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Drainage districts are political subdivisions of state. Mississippi State Hwy. Comm'n v. Yellow Creek Drainage Dist., 181 Miss. 651, 180 So. 749 (1938); Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

2. Construction and application.

Object of confiding drainage districts to chancery court is to assure correct and careful administration of affairs of district by commissioners as agents of chancellor, who also bear fiduciary relationship to all of the landowners in district. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

An insolvent drainage district is not subject to having its affairs administered and wound up by the federal district court under the 1937 amendment to the bankruptcy act providing for the composition of indebtedness of drainage districts, in the absence of consent by the state that the district's affairs may be so administered, which consent has not been granted by any act of the legislature. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

Injunction restraining highway commission from putting bridge across canal with piers so placed as to obstruct free flow of water, held proper. Mississippi State Hwy. Comm'n v. Yellow Creek Drainage Dist., 181 Miss. 651, 180 So. 749 (1938).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 6 et seq.

CJS. 28 C.J.S., Drains §§ 2 et seq.

§ 51-31-9. Selection of county drainage commissioners.

In every county in this state in which there is now a drainage district and in which a drainage district may hereafter be created or be proposed to be created under this chapter, the board of supervisors of such county shall select three county drainage commissioners for such county. The term of office of each commissioner shall be six years and until his successor is selected and has qualified, with said terms expiring at two-year intervals to insure the selection of one new commissioner every two years. Any vacancy in office of a county drainage commissioner in any county may be filled by the board of supervisors at any regular meeting of such board, which board is given the authority to fill all unexpired terms of any commissioner in the county.

Every resident citizen of any county, being the owner of land in said county and over 25 years of age, of good reputation, and of sound mind and judgment shall be eligible to hold the office of county drainage commissioner in the county of his residence.

If any commissioner shall refuse or neglect to discharge the duties imposed upon him by virtue of this chapter, or shall neglect or refuse to qualify as such commissioner after being selected for such office, the other two commissioners shall proceed to exercise the duties of their office and the business of said drainage district until the next meeting of said board of supervisors, when the office of the party refusing to perform or qualify shall be filled by the selection of another party in his stead.

SOURCES: Codes, 1906, §§ 1682, 1719; Hemingway's 1917, §§ 4261, 4308; 1930, §§ 4372, 4373, 4412; 1942, §§ 4577, 4578, 4617.

JUDICIAL DECISIONS

1. In general.

Orders and decrees of the chancery court made in process of creation of a drainage district cannot be appealed from. Clark v. Strong, 120 Miss. 95, 81 So. 643 (1919).

Order that drainage commissioners' report be referred back to the commissioners is not appealable. Clark v. Strong, 120 Miss. 95, 81 So. 643 (1919).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 27.

CJS. 28 C.J.S., Drains §§ 18-21.

§ 51-31-11. Oath and bond of drainage commissioners.

Each person selected county drainage commissioner shall, before entering upon the discharge of the duties of the office, give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00). Such commissioner shall take and subscribe to an oath of office before said clerk that he will faithfully discharge the duties of the office, which oath shall also be filed with the said clerk.

SOURCES: Codes, 1906, § 1682; Hemingway's 1917, § 4261; 1930, § 4373; 1942, § 4578; Laws, 1986, ch. 458, § 40; Laws, 2009, ch. 467, § 18, eff from and after July 1, 2009.

Editor's Note — Section 48, Chapter 458, Laws of 1986, provided that § 51-31-11 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 27 et seq.

CJS. 28 C.J.S., Drains §§ 18-23.

§ 51-31-13. Compensation of commissioners.

The commissioners each shall receive per diem compensation as provided by Section 25-3-69 for each day's actual service, not exceeding four (4) days in any one (1) calendar month, to be allowed on an itemized account rendered to the board of drainage commissioners and approved by the chancery court.

SOURCES: Codes, 1906, § 1716; Hemingway's 1917, § 4305; 1930, § 4409; 1942, § 4614; Laws, 1932, ch. 241; Laws, 1958, ch. 457; Laws, 1971, ch. 334, § 1; Laws, 1981, ch. 374, § 2, eff from and after July 1, 1981.

§ 51-31-15. Quorum.

A majority of the commissioners shall constitute a quorum, and the concurrence of a majority of their number in any matter within their duties and authority under this chapter shall be sufficient to bind the said board.

SOURCES: Codes, 1906, § 1691; Hemingway's 1917, § 4271; 1930, § 4380; 1942, § 4585.

§ 51-31-17. Secretary and treasurer of drainage districts.

After the organization of a drainage district, the commissioners shall elect a secretary and treasurer, who may be a member of the board or may be any person qualified to fill the position. He shall give bond in such sum as the commissioners, with the approval of the chancellor, may determine and shall receive such compensation as the commissioners may allow, subject to approval by the chancellor. Such secretary and treasurer shall receive from the county tax collector, whose duty it shall be to collect, all monies levied by said drainage commissioners. The commissioners, with the approval of the chancellor, may designate the depository for such funds; such depository to be a qualified county depository; and upon their failure so to do, the funds shall be deposited as is now provided by law for funds belonging to the treasury of the county. The drainage commissioners of a district which has no bonds outstanding or which has a surplus fund in the treasury, by and with the approval of the chancellor, may place the surplus funds in a qualified county depository on savings account for six (6) months or more, at a rate of interest of not less than two percent (2%), or may loan said surplus funds on land in the county in which the district is organized, at a rate of interest of not less than six percent

(6%) and on such terms and for such time as the chancellor may direct. Any such depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for county funds.

It shall be the duty of the treasurer to keep proper books to be furnished him by the commissioners, in which he shall keep an accurate account of all moneys received by him and of all disbursements of the same. He shall pay out no money except upon the order of a majority of the commissioners, shall carefully preserve on file all orders for the payment of money given him by the commissioners, and shall turn over all books, papers, vouchers, moneys and other property belonging to said district, in his hands as such treasurer, to his successor in office.

SOURCES: Codes, 1906, § 1704; Hemingway's 1917, § 4292; 1930, § 4400; 1942, § 4605; Laws, 1914, ch. 272; Laws, 1938, ch. 256; Laws, 1988, ch. 473, § 18, eff from and after December 1, 1988.

Cross References — Investment of surplus funds generally, see § 19-9-29.
Statement of financial condition by commissioners, see § 51-29-97.

§ 51-31-19. Employment of counsel.

The drainage commissioners may employ an attorney to assist in the formation and administration of the drainage district, and to represent the district in all matters of a legal nature, at a fixed or agreed compensation, subject to the confirmation of the chancery court or chancellor in vacation, who may decrease but not increase such compensation.

SOURCES: Codes, 1930, § 4447; 1942, § 4673.

Cross References — Power of drainage commissioners to employ counsel generally, see § 51-29-37.

§ 51-31-21. Creation of drainage districts on petition.

Whenever a majority of the owners of lands within a district proposed to be organized into a drainage district, who shall have arrived at lawful age and who represent one third in area of the lands in such proposed district, or whenever one third of the land owners in such proposed district owning more than one half of the lands in said district desire to organize a drainage district for the construction of drains or ditches across the lands of others for agricultural and sanitary purposes, or to maintain and keep in repair any such drains and ditches heretofore constructed, or to establish in said district a combined system of drainage or protection from wash or overflow for agricultural and sanitary purposes, and to construct and maintain the same by special assessment upon the property benefited thereby, such owners may file in the chancery court a petition signed by a majority of the owners of said land who own one third of the lands proposed to be included in said district, or by one third of the owners of said lands who own more than one half of the lands in said proposed drainage district to be organized as aforesaid, setting forth the proposed name of said drainage district, the necessity for the same, the description of the lands to be included in said drainage district, the names of the owners when known, together with the post-office address of such owners if the same can be ascertained, and may pray for the organization of a drainage district by a name to be given to the same.

SOURCES: Codes, 1906, § 1684; Hemingway's 1917, § 4265; 1930, § 4375; 1942, § 4580.

Cross References — Creation of urban flood and drainage control district, see § 51-35-307.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Petitioner of organization of drainage district under Laws 1912, ch. 197, conferred no jurisdiction to create a district under Code 1906. Hardee v. Brooks, 107 Miss. 821, 66 So. 216 (1914).

Decree including defendants' lands in the district will not be reversed because the commissioners did not actually go upon the land. J.T. Fargason & Son v. Sevier Lake Drainage Dist., 106 Miss. 694, 64 So. 467 (1914).

On petition of drainage district to amend the original assessment roll, an owner of land within the district could not attack the validity of the original assessment. Allen v. Hopson Bayou Drainage Dist., 106 Miss. 630, 64 So. 418 (1914).

Commissioners of drainage district organized under drainage law as amended by Laws 1912 ch. 202, need not, in assessing benefits, adopt 40 acres as the unit. Allen v. Hopson Bayou Drainage Dist., 106 Miss. 630, 64 So. 418 (1914).

Code 1906, § 1684 was sufficiently complied with by describing the lands in one paragraph, and giving the names and addresses of the owners in the following paragraph. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

Const. 1890, § 90, does not affect artificial water courses, and hence did not invalidate the former drainage act (Code 1906, §§ 1682-1727), because it was local. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

Code 1906 consisted of the matter included in the enrolled bill containing the same filed in the office of the secretary of state, and since the bill included Laws 1906, ch. 132, relating to drainage districts, that chapter was part of the public laws though not specified in Code 1906, § 1. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 9 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 1-3, 51, 81 (petition of landowners).

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:11-92:24 (creation of districts).

CJS. 28 C.J.S., Drains §§ 2 et seq.

§ 51-31-23. Jurisdiction of organization.

Where the land to be included in a proposed drainage district lies wholly within one county or a judicial district of a county, the petition for the organization of the district shall be filed in the chancery court of such county or judicial district. Where the lands to be included in such proposed drainage district lie in two or more districts or counties in this state, the petition shall be filed in the chancery court of the county or judicial district in which the greatest or greater number of acres of land to be included lie. Such chancery court or the chancellor thereof shall have jurisdiction of the entire drainage district, whether all of the proposed lands of the drainage district lie within the chancery court district, or a part of the lands lie outside thereof.

SOURCES: Codes, 1906, § 1685; Hemingway's 1917, § 4266; 1930, § 4376; 1942, § 4581; Laws, 1924, ch. 265.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 14-16.

CJS. 28 C.J.S., Drains § 4.

§ 51-31-25. Notice of petition.

Upon the petition being filed in the office of the clerk of said chancery court, said clerk shall cause three weeks' notice of the filing of said petition to be given, addressed "To all persons interested," by posting notices thereof at the door of the courthouse of the county or counties in which the district is situated and in at least ten of the most public places in said proposed district, and also by publishing said notice at least once a week for three consecutive weeks in some newspaper or newspapers published in the county in which the larger part of said district lies, if there be any newspaper published in said county. Such notice shall state when and in what court said petition was and is filed, with the general description of the land included in the said proposed drainage district and the boundaries of said drainage district, and when the said petitioners will ask a hearing of said petition. If any of the landowners in said district are nonresidents of said county or counties in which said proposed district will lie, or nonresidents of this state, the petition shall be accompanied by an affidavit giving the names and post office address of said nonresidents, if known, and if unknown, stating that upon diligent inquiry their places of residence and post offices cannot be ascertained; and the clerk shall send a copy of the notice which has been published as above provided by registered mail to each of said nonresidents whose residence or post office is known, which notice shall be mailed by said clerk not later than five days before the date set for hearing of the petition. The certificate of the clerk, with registered letter receipts attached, or the affidavit of any other credible person affixed to copy of such notice shall be sufficient evidence of the posting, mailing, and publication of such notice.

SOURCES: Codes, 1906, § 1687; Hemingway's 1917, § 4267; 1930, § 4377; 1942, § 4582; Laws, 1910, ch. 188.

JUDICIAL DECISIONS

1. In general.

Where complainant had full notice of all proceedings subsequent to the publication of notice of the organization of the district and was afforded full opportunity to question validity thereof, and object to assessment, all requirements of due process were made, even if the notice of publication was insufficient. Wilkinson v. Lee, 96 Miss. 688, 51 So. 718 (1910).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 20 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 4, 10, 52 (notice of filing of petition and of hearing thereon).

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-31-27. Date of hearing.

The chancery court in which such petition shall be filed may hear the petition at any term thereof, or the chancellor of said court may fix a time to hear such petition at any time in vacation, may determine all matters pertaining thereto and all subsequent proceedings of the district when organized under this chapter, may adjourn the hearing from time to time, and may continue the case for want of sufficient notice or other good cause. If said petition shall prove defective in any manner, the petitioners, upon motion, shall be permitted to amend the same.

SOURCES: Codes, 1906, § 1688; Hemingway's 1917, § 4268; 1930, § 4378; 1942, § 4583.

§ 51-31-29. Hearing of petitions.

Upon the day set for hearing said petition or a day to which same may be continued by the court or chancellor, all parties interested may appear and contest the same; and if the contestants file a petition signed by one third of the landowners in such proposed district owning more than one half of the lands in said district, then said original petition shall be dismissed. The court shall first determine whether the petition filed by the contestants is signed by persons of lawful age who represent one third of the landowners in such proposed district owning more than one half of the lands in said district. If it is so signed, the court or chancellor shall enter an order dismissing the original petition. If it is not so signed, then at the first hearing on the original petition the only questions to be passed upon by the court shall be: first, whether the petition is signed by the number of qualified signers required by this chapter; second, whether the required notices by publications, mail, and posting have been given; third, whether the lands of said proposed drainage district or any part thereof required a combined system of drainage; fourth, whether the creation of the district would meet a public necessity and would be conducive to the public welfare. If the court or chancellor shall find in favor of the petitioners upon all of these points, he shall enter an order to that effect, refer the said petition to the drainage commissioners of said county for proceedings thereon in compliance with this chapter, and fix a day upon which such commissioners shall meet to consider the same, and investigate the lands in the said proposed drainage district. All deeds made for the purpose of defeating or aiding the prayer of such petition, not made in good faith and for a valuable consideration, shall be taken and held to be in fraud of the provisions of this chapter; and the holders thereof shall not be considered as owners thereof in construing the provisions hereof. Upon said first hearing if the court or chancellor shall find that said petition is not signed as required by this chapter or that notices have not been given as required thereby, the court or chancellor may allow the petitioners to amend the same or may continue said petition for further hearing, with leave to the petitioners to give proper affidavit of any two or more signers of the said petition that they have examined said petition, that they are acquainted with the land and locality of such proposed district, and that such petition is signed by the number of landowners required by this chapter who are of lawful age. Such affidavit may be taken by the court or chancellor as prima facie evidence of the facts therein stated.

If the court or chancellor shall find against the petitioners upon any one or more of the points above provided, then said petition shall be dismissed; and in any dismissal under this section, all costs shall be adjudged against the petitioners for the organization of said proposed drainage district.

SOURCES: Codes, 1906, § 1689; Hemingway's 1917, § 4269; 1930, § 4379; 1942, § 4584; Laws, 1924, ch. 264; Laws, 1932, ch. 285.

JUDICIAL DECISIONS

1. In general.

Question whether petition contained requisite number of signatures not reviewable on appeal from decree confirming assessment. Wheeler & Silber v. Bogue Phalia Drainage Dist., 106 Miss. 619, 64 So. 375 (1914).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 24.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 7, 8, 53, 54 (remonstrance or objection).

CJS. 28 C.J.S., Drains §§ 55-58.

§ 51-31-31. Landowners may sign petition at hearing.

At the time of the hearing of the petition for the organization of any district, any landowner or landowners desiring so to do may sign said petition and ask that his lands be attached to and made part of said district.

SOURCES: Codes, 1906, § 1725; Hemingway's 1917, § 4317; 1930, § 4421; 1942, § 4626.

§ 51-31-33. Commissioners to estimate cost.

As soon as may be after such petition shall be referred to said commissioners, or within such time as the court or chancellor may direct, the commissioners shall meet and go upon said lands and examine the same, and the lands over which the work is proposed to be constructed, and determine: first, the starting point, route, and termini of the proposed work, the location and size of the main ditch to be constructed in said drainage district, which in their opinion will successfully drain the said lands, and whether the drainage of the lands in such proposed drainage district is possible or not, provided that any ditch already constructed in such proposed drainage district may be used as a "main", or part of a main ditch, if found expedient and sufficient for the purposes of the district; second, the probable cost of same, including expenses and court costs; third, what land will be injured or damaged by the proposed work and the probable aggregate amount of damages such lands will sustain by reason of the laying out and construction of such ditch or ditches; fourth, what lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of the construction of such work. In the examination of such district and determination of the questions for said commissioners to determine, the said commissioners are authorized and empowered to employ an engineer to go with them upon the lands of said district and examine the same, make a map and profile thereof, and an estimate of the size and depth of the ditch or ditches required for main outlets for the drains of said lands, and the probable cost, and a profile thereof.

SOURCES: Codes, 1906, § 1692; Hemingway's 1917, § 4272; 1930, § 4381; 1942, § 4586; Laws, 1924, ch. 264.

JUDICIAL DECISIONS

1. In general.

Law requiring survey of proposed drainage district does not contemplate working plans and specifications for contractor. Drainage Dist. No. 1 v. Evans, 136 Miss. 178, 99 So. 819 (1924).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 31 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 21, 55 et seq. (investigation of project).

CJS. 28 C.J.S., Drains § 65.

§ 51-31-35. Proceedings on report of commissioners.

The commissioners shall also find and determine whether all of the lands in said proposed drainage district will be benefited thereby, or drain into and have their outlet by and through the drains and ditches to be constructed in said proposed drainage district. If they shall find, by reason of any errors, mistakes, or misunderstanding, that any part of the lands described in said petition do not drain into said watershed and proposed ditches and drains, they may report that the same shall be excluded from said district when organized. Upon the report of the commissioners being filed with the clerk of the court in which such proceedings are had, the said clerk shall cause three weeks' notice thereof to be given, addressed "To all persons interested," by publication in some newspaper in said county in which such proceedings are had, if there be any newspaper so published. If there be no newspaper so published, the notice shall be posted for three weeks in ten conspicuous places in said district, but he shall not be required to mail notices to any persons or give any other or further notice than the mere publication thereof. Such notice shall state the time of filing such report, that a map and description of the work laid off and proposed to be constructed is on file in his office, and a description of the lands, if any, proposed to be thrown out or excluded from said district, and upon what day application will be made for confirmation of said report, at which time all persons interested may appear and contest the confirmation thereof, or propose that the report ought to be modified in any particular, and offer any competent evidence in support thereof. The day fixed by the clerk for the hearing of said report shall be at a certain day of the next succeeding term of said court as provided by this chapter, or at a certain day in vacation when the chancellor of said court may appear and hear the same.

SOURCES: Codes, 1906, § 1693; Hemingway's 1917, § 4273; 1930, § 4382; 1942, § 4587.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Law requiring survey of proposed drainage district does not contemplate working plans and specifications for contractor. Drainage Dist. No. 1 v. Evans, 136 Miss. 178, 99 So. 819 (1924).

Orders and decrees of the chancery court made in process of creation of a drainage district cannot be appealed from. Clark v. Strong, 120 Miss. 95, 81 So. 643 (1919).

Objection that drainage district was invalid because it embraced two water sheds, could not be made the basis of a bill to enjoin the commissioners from issuing bonds to complete the improvement. Wilkinson v. Lee, 96 Miss. 688, 51 So. 718 (1910).

§ 51-31-37. Disposition of report.

If upon the hearing of said report and of objections made thereto, the court or chancellor shall be of opinion that said drainage district should be organized, he shall order the confirmation of said report and declare said district duly organized. If it shall appear to the court or chancellor that additional ditches or drains for main outlets not named in the report are necessary, the court or chancellor shall modify the same to conform to the equities in the premises; or if not sufficiently informed, the court or chancellor may refer the said report back to the commissioners for correction, may order the commissioners to correct and reform their report, and may make directions how they shall reform their report. The court may make all necessary orders in the premises for the continuance of the hearing of said report and the confirmation thereof.

If the report be referred back to the commissioners for amendment, the court or chancellor may fix a day when the commissioners may again present their report, in which case the hearing shall stand adjourned to that date and no further notice shall be required thereof.

SOURCES: Codes, 1906, §§ 1694, 1695; Hemingway's 1917, §§ 4274, 4275; 1930, §§ 4383, 4384; 1942, §§ 4588, 4589.

JUDICIAL DECISIONS

1. In general.

Law requiring survey of proposed drainage district does not contemplate working plans and specifications for contractor. Drainage Dist. No. 1 v. Evans, 136 Miss. 178, 99 So. 819 (1924).

Statute does not expressly provide that the petition be heard in the county in which the land is located. Simmons v. Hopson's Bayou Drainage Dist., 112 Miss. 200, 72 So. 901 (1916).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 31 et seq.

CJS. 28 C.J.S., Drains §§ 48 et seq.

§ 51-31-39. Form of court's order.

If, after hearing all objections, if any, to the report of the commissioners and all applications, if any, to annex other lands to the proposed district by the owners of such lands, the court or chancellor finds that a drainage district should be organized, the map of the same shall be recorded and the order may be entered according to the findings of the court or chancellor, substantially as follows:

"The State of Mississippi
County of ________

________ Term, A.D. 20____.

In the matter of the petition to organize ________ drainage district in the county of ________ and State of Mississippi.

This day the report of the drainage commissioners of said county, filed in this cause, having been heard, and it appearing to the court or chancellor that due notice has been given "to all persons interested" for the length of time and in the manner required by law of the application to this court for the confirmation of said report, and the court or chancellor having duly examined said report and considered all objections to the same, it is ordered by the court that the report of said commissioners (or if modified by the court, say as modified by the court) be, and the same is, hereby confirmed; and the court further finds that the work proposed in said petition to be done will be beneficial for agricultural and sanitary purposes to the owners of the lands within said proposed district. And the court also finds that the persons who have signed said petition are of lawful age and owners of land in number and quantity as required by law. And it is further hereby ordered and decreed by the court that said district be, and the same is, hereby duly organized as a body politic and corporate by the name and style of ________ drainage district in the county of ________ and the State of Mississippi."

But if the court, after hearing said report and objections, finds that the work proposed in said petition and the report with estimated costs by the drainage commissioners will not be sufficiently beneficial and justifiable for agricultural and sanitary purposes to the owners of the lands within said proposed drainage district, then an order shall be entered on the minutes of the court dismissing the petition and disallowing the organization of the proposed drainage district; and all costs and expenses shall be adjudged against the petitioners for the proposed drainage district.

SOURCES: Codes, 1906, § 1696; Hemingway's 1917, § 4276; 1930, § 4385; 1942, § 4590; Laws, 1910, ch. 189; Laws, 1932, ch. 285.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Question whether petition contained requisite number of signatures not reviewable on appeal from decree confirming assessment. Wheeler & Silber v. Bogue Phalia Drainage Dist., 106 Miss. 619, 64 So. 375 (1914).

§ 51-31-41. District declared organized.

Upon entering such order of record upon the minutes of said court, said district is hereby declared by law to be organized as a drainage district, by the name mentioned in such petition and order of the court or chancellor in vacation and by the boundaries fixed by the order confirming the report of said commissioners, and is hereby declared to be a body politic and corporate by the name mentioned in said order of the court, with the right to have perpetual succession and to adopt and use a corporate seal. The commissioners and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authorities of said district and shall exercise the functions conferred upon them by this chapter.

SOURCES: Codes, 1906, § 1697; Hemingway's 1917, § 4277; 1930, § 4386; 1942, § 4591.

JUDICIAL DECISIONS

1. In general.

Purpose of drainage acts is reclamation of overflowed, nonproductive or insanitary lands, and the several districts are organized as legal and administrative entities and, as such are a body politic with the right of perpetual succession. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 9 et seq.

70 Am. Jur. 2d, Special or Local Assessments §§ 1:14 et seq.

CJS. 28 C.J.S., Drains § 3.

§ 51-31-43. Preliminary expenses.

All moneys that have been advanced or expended in good faith by parties interested in the organization of any district, necessary for the preliminary work in organization, such as surveys, attorneys' fees, and incidentals thereto, may be repaid by the drainage commissioners as follows: If the district is organized, to be paid as a part of the costs of said district; but if the organization of the district is denied, the court or chancellor in vacation may make such orders and decrees as may appear to be equitable and just to all parties interested towards providing for the payment of such sums, together with such sums as the commissioners have expended or contracted for in good faith after the reference of the petition to them, and to this end may assess an acreage tax against such lands in such district which were owned by the persons signing the original petition praying that the district might be organized. After the petition for the organization of a district is filed and referred to the commissioners, they are authorized and empowered to issue certificates of the district to raise funds to have all necessary surveys made and to pay all necessary expenses and costs incurred in the preliminary work prior to the organization thereof, which certificates shall bear interest at the rate of 6% from their dates, but no certificate shall be made payable for a longer period than two years from its date. These certificates shall be paid as soon as the district is organized and sufficient funds come into the hands of the commissioners to pay same. Where any district shall fail to be organized solely by reason of the fact that a sufficient number of petitioners signing the original petition withdrew therefrom so as to leave an insufficient number of petitioners or an insufficient acreage represented by the petitioners remaining, and the chancery court or chancellor shall so state in his decree, the entire costs of the proceedings shall be decreed against the lands of such petitioners so withdrawing, on an acreage pro rata basis.

SOURCES: Codes, Hemingway's 1917, § 4283; 1930, § 4391; 1942, § 4596; Laws, 1912, ch. 196; Laws, 1920, ch. 287.

§ 51-31-45. Assessment roll.

As soon as practicable after the entry of the order organizing a drainage district, the drainage commissioners shall go upon the lands of said district, examine the same, and assess the benefits to be derived by each separate tract of land for the proposed work, putting down in dollars and cents the amount of such benefits to be derived by such tract. They shall also estimate and put down in another column the amount of damages, if any, that any of the owners of said land may, in the opinion of such commissioners, sustain by reason of the construction of such work over their land in such district; shall make an estimate of the costs of draining said district, apportioned to each tract of land; and shall make and file a schedule or assessment roll of the same, which shall be substantially in the following form:

Name of Owner	Description of Land Sub Div. Sec. T.R. and acres	Amount of Benefits	Amount of Damages	Estimated Cost of Work	Assessment
______		$______	$______	$______	$______

Provided that, for the purpose of providing funds with which to clean out, restore, repair and rehabilitate the whole or any part of the drainage system of such district or for the purpose of cooperating with the United States or any agency thereof in such works, there may be imposed a uniform assessment on each acre of unsubdivided land lying within the district, and a uniform assessment by lot on an acreage basis on subdivided land lying within the district, and the records required in this chapter shall show the amount of the assessment in lieu of the amount of benefits to accrue to each tract. Taxes levied hereunder are hereby declared to be taxes for maintenance purposes and shall not diminish in any manner the amount of assessed benefits in any such district which is otherwise available for the payment of any outstanding bonds of such district.

The assessments provided for in this section may be made even though evidences of indebtedness have been issued or validated or both prior thereto, but the lien of the holders of any such indebtedness shall not be impaired thereby.

SOURCES: Codes, 1906, § 1698; Hemingway's 1917, § 4278; 1930, § 4387; 1942, § 4592; Laws, 1912, ch. 196; Laws, 1977, ch. 332, § 3; Laws, 1995, ch. 392, § 3, eff from and after passage (approved March 15, 1995).

JUDICIAL DECISIONS

1. In general.

It is common knowledge that valuable timber, such as cypress, must have water for its continued life and growth. Matthews v. Panola-Quitman Drainage Dist., 158 Miss. 647, 130 So. 910 (1930).

Owner could remove timber from land within drainage district without payment of installments of assessment to become due on land subsequent to removal. Matthews v. Panola-Quitman Drainage Dist., 158 Miss. 647, 130 So. 910 (1930).

Under Code 1906, § 1698, as amended by Laws 1912, ch. 196, § 2, commissioners could make a new assessment for benefits to be derived by each separate tract of land for repairs and maintenance in the district. Simmons v. Hopson's Bayou Drainage Dist., 112 Miss. 200, 72 So. 901 (1916).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 38 et seq.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:51-92:63 (assessments).

CJS. 28 C.J.S., Drains §§ 106-108 et seq.

§ 51-31-47. Notice of assessments.

When the commissioners shall have completed their assessments of damages and benefits, they shall file the same with the clerk of the chancery court; and the clerk is authorized to set down and fix a time for the hearing of objections to such assessments, at the request of said commissioners, at any time that the court or chancellor in vacation may be able to hear the same as herein provided. The clerk shall cause a notice to be published at least once a week for two successive weeks, of the time set for hearing objections to such assessments, which time for hearing shall not be less than fifteen days nor longer than thirty days from the time of filing the same, unless a longer time shall be ordered by the court or chancellor or requested by the commissioners. Said publication shall be made in any newspaper published in the county, if there be one published in the county where the cause is pending; otherwise, by posting written notices in ten public places in the district, and shall be sufficient, and the only notice required of the filing of said assessment roll and the time set for hearing objections thereto.

SOURCES: Codes, 1906, § 1700; Hemingway's 1917, § 4284; 1930, § 4392; 1942, § 4597; Laws, 1912, ch. 196.

JUDICIAL DECISIONS

1. In general.

Where chancery clerk published notice at least once a week for two successive weeks of the time set for hearing objections to assessments, such notice was reasonable and valid and there was no denial of due process. Simmons v. Hopson's Bayou Drainage Dist., 112 Miss. 200, 72 So. 901 (1916).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 48.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Form 82 (notice of assessment to landowner).

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:61 (notice of assessment), 92:63 (notice of assessment of property benefited within district), § 92:64 (objection to assessment by property owners).

CJS. 28 C.J.S., Drains §§ 118-121.

§ 51-31-49. Hearing objections.

The commissioners and landowners shall appear at the time and place set for hearing objections to said assessment roll, and the court or chancellor in vacation shall hear all objections that may be made, by the commissioners, landowners, or other persons interested, to the amount of benefit assessed or damage allowed to any tract or tracts of land on said assessment roll or to the assessments as a whole. After hearing all evidence offered, the court or chancellor in vacation shall direct the commissioners to make such alterations as shall be deemed just and equitable, by raising or lowering all or any assessment as the court may deem proper for the accomplishment of the work; and any changes so made by the court or chancellor shall be final unless appeal be taken.

SOURCES: Codes, 1906, § 1701; Hemingway's 1917, § 4285; 1930, § 4393; 1942, § 4598; Laws, 1910, ch. 190.

Cross References — Assessments confirmed within drainage districts with County Commissioners, see § 51-31-51.

Applicability of Mississippi Rules of Civil Procedure to proceedings relative to creation and maintenance of drainage and water management districts, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

ALR. Cotenancy as factor in determining representation of property owners in petition for, or remonstrance against, public improvement. 3 A.L.R.2d 127.

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Form 83 (remonstrance or objection to assessment).

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:62 (objections to assessment).

CJS. 28 C.J.S., Drains §§ 134-136.

§ 51-31-51. Assessments confirmed.

Any party in interest may appeal to the supreme court of the state within ten days after the assessments have been confirmed or passed upon as provided in Section 51-31-49. The record of the proceedings or the bill of exceptions in every case shall be required to be filed within thirty days after the hearing, and the appeal bond shall be filed and approved within ten days after such approval of the assessment. Each party appealing shall execute a separate appeal bond in a sum of not less than $100.00, and a greater penalty shall be required, where in the judgment of the chancellor or court, the costs in the case are likely to exceed the sum of $100.00. After ten days from the approval of the assessments, the decree shall be final as to all persons in interest who have not executed appeal bonds as herein provided or as the court may fix as to the amounts thereof. No appeals shall be allowed in the proceeding until after the assessments are made final by order of the court or chancellor, whether the appeal relates to the assessment or to other features of the proceeding; and no appeal or appeals shall stop the proceedings with reference to the organization and doing the work of the district, but the work and proceedings shall proceed the same as if no appeal or appeals had been had. In case of a reversal in any feature of the proceedings, the errors shall be corrected according to the mandate of the court, so that no injustice shall result from any error of the court first making the error.

SOURCES: Codes, 1906, § 1702; Hemingway's 1917, § 4286; 1930, § 4394; 1942, § 4599; Laws, 1912, ch. 196.

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 162 et seq.

CJS. 28 C.J.S., Drains §§ 134-136.

§ 51-31-53. Payment of assessments.

At the time of confirming the assessments of benefits and damages and the estimated costs of the work proposed, the court or chancellor may order the assessments to be paid in installments, in such amounts and at such times as may be convenient for the accomplishment of the work proposed or the payment of bonds issued therefor; otherwise, the whole amount of such assessments shall be payable on the confirmation of such assessments. The assessments and installments thereof shall draw interest at the rate of not exceeding six percent (6%) per annum, payable annually, from the date of the confirmation; but if any owner elects he may pay the whole amount of the assessment and interest against any part of his property, or all of it, before it becomes due and within thirty days from the date of the confirmation of the assessments and benefits and before the issuance of bonds for the district, and all such property paid on shall not be liable for the payment of such bonds and assessments further. All assessments for benefit and assessments for doing the work of the district shall be a lien upon the lands of the district, assessed specifically against such lands which have not had their assessments paid, and shall continue until such assessments are levied and paid. In case any assessment and accrued interest is not paid when due, the specific land against which said assessment is made shall be advertised and sold by the tax collector of the county, as he is required to sell lands delinquent for state or county taxes; and all the provisions of the laws of this state in reference to the sale of lands to enforce the payment of state and county taxes are hereby declared to be and hereby are made a part of this chapter to enforce the payment of the assessments herein authorized to be made. All drainage assessments shall be collected by the tax collector of the county at the same time and in the same manner as are state and county taxes, and the same penalties shall accrue for the nonpayment of drainage assessments as for nonpayment of state and county taxes.

At the time of confirming such assessments, the court or chancellor in vacation may authorize the levying of such portions of such assessments as may be necessary to pay the principal and interest on the bonds authorized to be issued, and to carry out the purposes for which the said district was formed and organized.

SOURCES: Codes, 1906, § 1703; Hemingway's 1917, § 4287; 1930, § 4395; 1942, § 4600; Laws, 1914, ch. 270; Laws, 1968, ch. 361, § 6, eff from and after January 1, 1972.

Cross References — Abatement of lien of drainage district upon sale of land for taxes, see § 29-1-97.

Order of court for assessments and levies to cover cost of improvements, see § 51-29-45.

JUDICIAL DECISIONS

1. In general.

Under Code 1906, §§ 1703, 1706, 1709 (Code 1942, §§ 4600, 4601, 4607), it is proper to provide for payment of interest annually on drainage district bonds. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 216 et seq.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts § 92:63 (payment of assessment).

CJS. 28 C.J.S., Drains §§ 155, 156 et seq.

§ 51-31-55. Right of way agreements.

The commissioners shall also, as soon as said petition to organize said district has been referred to them by the court, proceed to procure the right of way for the main ditch or ditches of said district, as well as the right of way for any laterals, drains, or levees that may be decided upon, by agreements with the landowners over or through whose lands the same is to be constructed. They shall take releases of rights of way for the construction of such ditch or ditches from the landowners and file same with the clerk, who shall record them. If the commissioners shall not be able to agree with any landowner as to the amount of damages such owner should receive for the right of way over which such ditch or other improvements or work shall be constructed, the commissioners shall appraise the said lands needed for said purposes and proceed as directed in Section 51-31-57.

Should it be necessary for the successful prosecution of the work for an outlet or outlets to be obtained outside of the boundaries of the district, then the commissioners are authorized to obtain the same by contract with the interested parties or by eminent domain proceedings, on the approval of the chancery court or chancellor.

SOURCES: Codes, Hemingway's 1917, § 4179; 1930, § 4388; 1942, § 4593; Laws, 1912, ch. 196; Laws, 1920, ch. 287.

JUDICIAL DECISIONS

1. In general.

Commissioners cannot set off damages resulting from taking of part of tract for right of way purposes against benefits accruing to such tract, since the damages are to be ascertained by eminent domain and paid in cash. Wheeler & Silber v. Bogue Phalia Drainage Dist., 106 Miss. 619, 64 So. 375 (1914).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 34.

26 Am. Jur. 2d, Eminent Domain § 44.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:31-92:44 (acquisition of property).

CJS. 28 C.J.S., Drains § 75.

§ 51-31-57. Notice of appraisement by commissioners.

When the commissioners shall have made their appraisement of the land taken or to be taken, they shall certify the same and file it with the clerk of the chancery court of the county in which the land lies, and if the proceedings be in another county, also with said clerk in the county where the proceedings are had. The clerk shall thereupon set down and fix a time for the hearing of objections to such appraisement, at the request of the commissioners, to be heard by the chancery court or the chancellor in vacation. The clerk shall issue a summons directed to the sheriff of the county or counties of this state in which any landowner or other person interested may reside, commanding him to summon such owner or owners or other interested person to be and appear at the time and place named. If the owner of any land sought to be taken be an infant or person of unsound mind, the summons may be executed on his guardian; and the guardian in such cases is authorized, subject to the approval of the chancellor in term time or vacation, to sell and convey such property and dedicate it thus to the public use, or he may agree upon the damages and thereby bind the ward. If there be no guardian in such case, the chancellor in vacation may, on application of any one in interest, appoint a guardian ad litem to represent such infant or person of unsound mind, whose acts and doings in the premises shall be valid and binding on the ward. The chancellor may require a bond of such guardian ad litem. If the owner of such land be a nonresident of the state or cannot be found, or if the owner be unknown, and this shall apply to any person interested, upon affidavit to that fact being made by the commissioners or by their agent or attorney, service of the summons may be had on any of his agents in charge of the land; or publication shall be made in the manner provided by law for publication for nonresident and unknown parties in chancery suits. If the land belong to a deceased person whose estate is being administered, the summons may be served on the executor or administrator, who shall, for all purposes of this chapter, be authorized to act for the owner, and he shall be responsible on his bond accordingly. Such notice, when published, need only state that the hearing will be for the purpose of confirming the report of the commissioners as to the appraisement of land taken for the use of the district and through which the ditches of the district are to run; it shall contain the names of the owners or persons interested in such land and their post-office address, if known, and if unknown that fact shall be so stated; and it shall further contain a list of the land, described by section numbers, belonging to such nonresident owners and through which the ditches of the district are to run. If any owner is not satisfied with the amount allowed by the commissioners for land taken by reason of the construction of such proposed system according to the plans of said district, he shall file written objections thereto on or before the day named in the summons or notice.

SOURCES: Codes, Hemingway's 1917, § 4280; 1930, § 4389; 1942, § 4594; Laws, 1914, ch. 270.

JUDICIAL DECISIONS

1. In general.

Laws 1914, ch. 270, conferring right of eminent domain on drainage districts, is valid as a "general law" and is not a "special law." Riverside Drainage Dist. v. Buckner, 108 Miss. 427, 66 So. 784 (1914).

Laws 1914, ch. 270 not in conflict with Const. 1890, § 17, because it permits payment of compensation to chancery clerk. Riverside Drainage Dist. v. Buckner, 108 Miss. 427, 66 So. 784 (1914).

Laws 1914, ch. 270, does not violate § 31 Const. guaranteeing right of trial by jury. Riverside Drainage Dist. v. Buckner, 108 Miss. 427, 66 So. 784 (1914).

§ 51-31-59. Appraisement hearing.

If on the hearing by the court or chancellor in vacation no written objections are filed, a decree confirming the appraisement shall be rendered. Upon payment of said amount to the chancery clerk for the party entitled thereto, the district may enter upon and take possession of said property and appropriate it to the use of said district; and the title to the easement thereof and thereover shall thereupon vest in said district. The clerk shall receipt upon said decree for the money paid, and said decree with the receipt of the clerk thereon shall be recorded in the records of deeds of the county in which the land lies. If written objections are filed on or before the time set for the hearing, the court or chancellor in vacation shall proceed to hear the objections filed and, on demand of the party making said objections, shall empanel a jury to determine the value of the land taken and the damage due the objector.

No decree pro confesso shall be entered against an owner or person interested residing in this state unless it appear that he has been duly served with summons at least two days prior to the return-day, and no decree pro confesso shall be rendered against any nonresident or unknown owner or person interested unless proper publication has been made.

At the hearing, the report and appraisement of the value of the land sought to be taken and the damages sustained by the owner thereof shall be prima facie correct.

The court or chancellor in vacation may, at such hearing, hear all objections in entirety or in severalty, may enter a decree confirming the entire report of the commissioners, or may enter any number of decrees confirming the report as to any land taken. At such hearing, the court or chancellor in vacation may direct the board to make such alterations in the appraisement as may be deemed just and equitable, by raising or lowering any appraisement; and payment of such amount fixed by the decree shall be made to the chancery clerk as hereinbefore provided. Said clerk shall receipt for same on the decree, and such decree with receipt thereon shall be recorded.

SOURCES: Codes, Hemingway's 1917, § 4281; 1930, § 4390; 1942, § 4595; Laws, 1914, ch. 270.

§ 51-31-61. Levy to provide estimated funds.

Upon the organization of said districts as herein provided, and as soon as said drainage commissioners have proceeded to procure the rights-of-way, either by agreement or condemnation, for ditches or canals, both main and lateral, or for the erection of levees, and the right-of-way to enter upon, alter, deepen, or improve natural drains or watercourses, they shall make an estimate of the cost, including commissioner's fees and expenses of said proposed work, or if said estimate has been made it shall be revised and approved. Said commissioners shall file a levy certifying the amount required by them for the construction of such proposed work, and may in said levy order that so much of the benefits or betterments assessed against the lands in such district as will be necessary to defray the costs of said work, to be paid in cash; or said commissioners may in said levy order that the same be paid in not exceeding forty (40) installments, with interest on each installment at a rate of interest not to exceed six percent (6%) per annum. Or, the said commissioners may order in said levy that bonds of said district shall be issued and sold for any amount not exceeding eighty percent (80%) of the assessed value of the benefits or betterments. Said bonds shall be payable in from one (1) to forty (40) years from the date issued, with interest from the date issued at an overall maximum interest rate to maturity not greater than that allowed in Section 75-17-101, payable annually or semiannually, as the court or chancellor in vacation may direct; and it shall be lawful to attach coupons for any part of a year to the bonds maturing the first year. If bonds are thus issued and sold for an amount not exceeding eighty percent (80%) of the value of said betterments, the said commissioners may order the remaining twenty percent (20%), or any part thereof, to be paid in cash at its discretion. If the amounts levied be not sufficient to complete the work done or hereafter to be done, or if bonds are issued and sold for an amount less than eighty percent (80%) of the value of the assessed benefits and additional funds are required to complete the work or pay for work theretofore done, an additional levy may be made or an additional issue of bonds may be made, provided the additional levy, when added to the original levy, shall not exceed the amount of betterments assessed, or that the additional bond issue shall not be for an amount which, added to the original bond issue, shall exceed eighty percent (80%) of the assessed value of the betterment. Such additional levy shall be made payable in cash or in not exceeding fifteen (15) installments, each installment bearing interest at a rate not exceeding six percent (6%) per annum.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the registered bond act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1906, § 1706; Hemingway's 1917, § 4294; 1930, § 4396; 1942, § 4601; Laws, 1924, ch. 258; Laws, 1984, ch. 506, § 6, eff from and after passage (approved May 15, 1984).

Cross References — Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

JUDICIAL DECISIONS

1. In general.

Under Code 1906, §§ 1703, 1706, 1709 (Code 1942, §§ 4600, 4601, 4607), it is proper to provide for payment of interest annually on drainage district bonds. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

§ 51-31-63. Tax levied to meet assessment.

On or before the first Monday of September of each year, the drainage commissioners shall levy a tax on the amount of the original or supplemental assessment of benefits, which shall be in the same proportion as the installment authorized and directed by the court to become due that year, and shall certify their levy to the board of supervisors of the county in which the land lies. It shall thereupon become and be the duty of the said board or boards of supervisors to make a levy in accordance with such assessment sufficient to meet the bond obligations issued by the drainage commissioners and the interest accruing thereon, with ten per cent of the amount of such annual payment added for contingent expenses and liabilities in accordance with the decree of the chancellor. The ten per cent additional levy herein provided may be omitted in any one year when it shall appear that the contingent expense fund on hand exceeds twenty per cent of the total amount of bond and interest obligations falling due during the fiscal year. The said levy shall be apportioned and levied on each tract of land or other property in the district in proportion to the benefits assessed, and not in excess thereof. As soon as said levy is made, the secretary of the commissioners, at the expense of the district, shall prepare an assessment record of the district. It shall be a copy of the "assessment roll" provided above, and may contain any number of columns therein in which may be inscribed the levy made each year. He shall place therein the amount of the levy for the year, including interest accruing on the unpaid installments, and the said record shall be certified by the board of drainage commissioners, attested by the seal of the district, and filed with the tax collector of the county in which the land is located. The said secretary shall make a copy for each county in which the lands of the district may be situated, but only the lands situated in such county need be inscribed therein. At the time of confirming such assessment as herein provided, it shall be competent for the court or chancellor in vacation in such order to provide for all details connected with the fixing of the date, form, maturity, and amounts of any and all bonds that are ordered to be issued, and the fixing of the installments for the payment of such bonds. The court or chancellor in vacation may take the matter of such details under advisement for such further orders and decrees in vacation as may be necessary or advisable to perfect the details of same.

SOURCES: Codes, Hemingway's 1917, § 4288; 1930, § 4397; 1942, § 4602; Laws, 1914, ch. 270.

Cross References — Liability of school land for assessed taxes, see § 29-3-73.
Tax for maintenance of flood control works and roads, see § 51-35-7.
Levy of county taxes generally, see § 51-35-7.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4602] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 38 et seq.

CJS. 28 C.J.S., Drains §§ 101 et seq.

§ 51-31-65. Levy each year to meet bond obligations.

It shall be the duty of the board of supervisors of each county in which land is located, on the recommendation of the drainage commissioners, to make a levy each year on the lands lying in their respective counties in accordance with such assessments and levies sufficient to meet bond obligations of any district issued by authority of law.

SOURCES: Codes, Hemingway's 1917, § 4289; 1930, § 4398; 1942, § 4603; Laws, 1912, ch. 196.

Cross References — Levy of county taxes generally, see § 27-39-317.

§ 51-31-67. Reassessments in case of underestimates.

If the court, chancellor, or drainage commissioners have underestimated the amount or the costs of work necessary for any district, then on the recommendation of the commissioners, the court or chancellor may order such additional work done or such additional costs paid and may, with the approval of the commissioners and on their recommendation, reassess the several properties of the district in proportion to the benefits to accrue to such respective properties. In such case the commissioners shall report the facts as they are required to report the benefits and assessments in the first instance, and the court or chancellor shall hear their report and all objections thereto on the same notice to the parties interested as in the first instance of approving assessments and benefits. Appeal shall lie from decree as in the first instance, and they shall be final only as decrees are final in the first instance.

SOURCES: Codes, Hemingway's 1917, § 4290; 1930, § 4399; 1942, § 4604; Laws, 1912, ch. 199.

JUDICIAL DECISIONS

1. In general.

Prior to Laws, 1912, ch. 199, commissioners had no power to reassess for additional work not included in the estimate. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

Commissioners have no authority to pay increased cost caused by a change in plans after apportionment of cost. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

Contract for additional work must be made in the manner provided by law to authorize reassessment. Gum Ridge Drainage Dist. v. Clark & Parker, 124 Miss. 382, 86 So. 859 (1921).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 42.

CJS. 28 C.J.S., Drains §§ 148-151.

§ 51-31-69. Sale of district bonds.

In case the drainage district shall issue bonds for any part of the money levied for the purpose of the district as hereinabove authorized, said bonds may be sold upon the market to the best advantage but shall not be sold for less than par value, unless a sale below par be approved by the chancellor and the commissioners. The whole amount realized from the sale of such bonds shall be deposited in the treasury of said district.

SOURCES: Codes, 1906, § 1709; Hemingway's 1917, § 4297; 1930, § 4402; 1942, § 4607; Laws, 1914, ch. 273.

Cross References — Advertising of sale of bonds, see § 31-19-25.
Power of commissioners to borrow money, see § 51-29-63.
Issue of additional bonds by drainage district, see § 51-31-111.

JUDICIAL DECISIONS

1. In general.

Under Code 1906, §§ 1703, 1706, 1709 (Code 1942, §§ 4600, 4601, 4607), it is proper to provide for payment of interest annually on drainage district bonds. Haley v. Drainage Comm'rs, 99 Miss. 556, 55 So. 353 (1911).

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 172 et seq.

CJS. 28 C.J.S., Drains §§ 22, 23.

§ 51-31-71. Contracts let to lowest bidder.

After the organization of any drainage district under this chapter, and after the confirmation of the assessment as in this chapter provided, and after laying out a system of main drains for said drainage district, the said commissioners shall advertise for bids for the construction of said ditches by publishing a notice for three weeks in some newspaper in the county in which such district is organized, stating the time when and place where they will receive bids for the construction of such work. The time fixed for receiving and opening said bids shall not be less than twenty-two days from the time of the first publication. Said notice shall specify the kind and nature of the work to be done, the amount thereof as estimated by the engineer, and in what manner payment thereof will be made. They shall meet at the time and place designated in said notice and open said bids, and said contracts shall be let to the lowest responsible bidder. The said commissioners shall have the right to reject any and all bids if they deem that the same are too high, and may adjourn said letting to a future time and continue said advertisement until that time.

The commissioners shall take and file a certificate of publication of such notice with the clerk; and upon the acceptance of any bid for the construction of any work, they shall require said bidder to enter into contract with them for the faithful performance of said work according to the plans, specifications, profile, and estimates of the engineer, and require said contractor to enter into bonds for the faithful performance of said work within the time and in the manner specified in said contract.

SOURCES: Codes, 1906, § 1710; Hemingway's 1917, § 4299; 1930, § 4403; 1942, § 4608.

RESEARCH REFERENCES

ALR. Authority of state, municipality, or other governmental entity to accept late bids for public works contracts. 49 A.L.R.5th 747.

State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:71-92:94 (construction contracts).

§ 51-31-73. Commissioners to construct and maintain drains.

The commissioners may, after the organization of said district, do any and all acts that may be necessary in and about the surveying, laying out, constructing, repairing, altering, enlarging, cleaning, protecting, and maintaining any drain or ditch or other work for which they have been appointed. They and their successors shall have charge of said ditch in perpetuity, and shall annually see that the same is cleaned out and all obstructions, brush, willow, or other growth removed therefrom, to the end that said ditches shall be kept thoroughly cleaned and in good repair so as to perfectly drain said lands. For those purposes, the commissioners may borrow money in anticipation of the collection of already levied taxes not to exceed in any one (1) fiscal year one percent (1%) of the amount of the benefits assessed against all of the real property in the district, at an overall maximum interest rate to maturity not greater than that allowed in Section 75-17-105. They may issue in evidence thereof tax anticipation warrants, which warrants shall be paid solely and only out of the first funds collected from taxes levied prior to the borrowing of such funds and issuance of such warrants; and they may make additional assessments from time to time, as necessity may require, to pay for the expense of maintaining, cleaning out, and keeping in repair the ditches of said district and meeting the legal obligations of such district. The additional assessment for maintaining, cleaning out, and keeping in repair the ditches of said district and meeting the legal obligations of such district shall be made by the commissioners in the following manner: on or before the first Monday in September of each year the drainage commissioners shall assess on each tract of land or other property in the district, in proportion to the original and supplemental benefits assessed for construction, such an amount as is necessary to pay the expense of maintaining, cleaning out, and keeping in repair the ditches of said district and meeting the legal obligations of such district, and shall certify their assessment to the board of supervisors of the county in which the land lies; and it shall thereupon become and be the duty of the board of supervisors to levy a tax in accordance with such assessment sufficient to meet said expense of maintaining, clearing out, and keeping in repair the ditches of said district. The said tax levied shall be apportioned to and levied on each tract of land or other property in said district in proportion to the original and supplemental benefits assessed for construction, or as otherwise provided by law. As soon as the said tax levy is made, the secretary of the commission, at the expense of the district, shall prepare an assessment record of the district, which may contain any number of columns therein, in which may be inscribed the tax levied each year. He shall place therein the amount of the levy for the year, and the said record shall be certified by the commissioners, attested by the seal of the district, and filed with the tax collector of the county in which the land is located. The said secretary shall make a copy for each county in which any lands of the district may be situated, but only the lands situated in the county need be inscribed therein. Any person aggrieved at the action of the board of supervisors in levying the tax herein provided shall have the same right of appeal as is provided by law for appealing from the action of said board in levying county taxes. All taxes hereunder assessed and levied shall be collected at the same time and in the same manner as are state and county taxes, and the same penalties shall accrue for the nonpayment thereof as for nonpayment of state and county taxes. In the event a drainage ditch shall be totally destroyed by the construction of public levees, the drainage district commissioners shall strike the land affected by such destruction from the assessment rolls of the district; but such action shall in no way affect the lien of the bondholders of the district upon such land.

SOURCES: Codes, 1906, § 1712; Hemingway's 1917, § 4301; 1930, § 4404; 1942, § 4609; Laws, 1920, ch. 285; Laws, 1940, ch. 222; Laws, 1984, ch. 506, § 7; Laws, 1995, ch. 392, § 4, eff from and after passage (approved March 15, 1995).

Cross References — Rate of interest which the notes described in this section shall bear, see § 75-17-105.

JUDICIAL DECISIONS

1. In general.

In proceeding by drainage district for authority to borrow money for maintenance of drainage system, chancellor has no authority, after final judgment establishing it, to release lands from district, but where lands will not be benefited by rehabilitation of drainage system because they involve abandoned drainage ditch which never functioned, such lands should be released from new assessment and levy and commissioners released from clearing out and maintaining abandoned ditch, and chancellor's release of land from district may be construed as so holding. Moorhead Drainage Dist. v. Jackson, 208 Miss. 594, 45 So. 2d 234 (1950).

Purpose of drainage acts is reclamation of overflowed, non-productive or insanitary lands, and the several districts are organized as legal and administrative entities and, as such are a body politic with the right of perpetual succession. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

An additional assessment may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears "absolutely necessary in order to preserve and maintain the improvements of the district," and the mere fact that landowner was not apparently benefited from the improvement and maintenance of a certain drainage canal in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 36 et seq.

7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:81 et seq. (Construction and operation of drains and sewers).

CJS. 28 C.J.S., Drains §§ 76-78 et seq.

§ 51-31-75. Lateral ditches to be laid out.

After the construction of said system of main ditches for said drainage district, all landowners in said district may construct branch or lateral drains, either open or tile, leading into said ditches and thereby drain their respective lands into said main outlet. In case any two or more landowners desiring to construct a branch or lateral ditch or drain to drain their lands cannot agree upon the just proportion to be borne by each, any one of them may petition the commissioners to lay out a branch ditch leading to and draining their lands; and the commissioners may proceed to lay out the same by giving notice and making assessments on the land in said subdistrict in the same manner in which they are herein required to give for the organization of the main district and assessment of the property benefited thereby.

SOURCES: Codes, 1906, § 1713; Hemingway's 1917, § 4302; 1930, § 4405; 1942, § 4610.

JUDICIAL DECISIONS

1. In general.

Total departure from the route authorized by chancery court's decree must be approved by court. McCreight v. Central Drainage Dist., 137 Miss. 319, 102 So. 276 (1924).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 36, 37.

CJS. 28 C.J.S., Drains §§ 79-81 et seq.

§ 51-31-77. Actual damages recoverable.

In case any damages shall be allowed to any landowner for the construction of ditches across his said lands, actual damages shall be allowed. Such damages shall be paid in cash by giving to the party entitled thereto an order for the amount thereof on said district treasurer, who shall pay the same on presentation.

SOURCES: Codes, 1906, § 1714; Hemingway's 1917, § 4303; 1930, § 4406; 1942, § 4611.

§ 51-31-79. Jurisdiction of drainage commissioners.

Where the lands of any drainage district lie in two or more counties of this state, the county drainage commissioners of the county in which the greatest or greater number of acres of land lies, and in which the suit is brought for the organization of the drainage district, shall have jurisdiction as county drainage commissioners under the chancellor or chancery court of the entire drainage district the same as if the entire drainage district lay in the county of their selection. In reporting to the board of supervisors levies of taxes to be made by the board for the payment of bonds and other obligations of the district, the county drainage commissioners having jurisdiction over such drainage district shall make report to the board of supervisors of each county in which any of the lands of the drainage district lie, showing all the lands and assessments thereon lying in such county. The board of supervisors of the county in which such lands lie shall make the required levies, and the tax collectors of the counties in which the lands lie shall collect the taxes thus levied and account to the treasurer of the drainage district therefor, as in other cases.

SOURCES: Codes, Hemingway's 1917, § 4382; 1930, § 4407; 1942, § 4612; Laws, 1912, ch. 197.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 14 et seq.

CJS. 28 C.J.S., Drains §§ 2 et seq.

§ 51-31-81. Annual reports.

At the end of the fiscal year after the organization of said drainage district and annually thereafter, the said commissioners shall make a report showing the amount of money levied for main district purposes, the amount of orders issued, the purposes for which issued, to whom payable, the amount of money on hand, and the amounts levied and expended for each and every subdistrict or lateral drain laid out and established by them. If at any time it shall appear that there is not sufficient funds to pay for any work done or contemplated, the commissioners may make a levy for the amount required to finish paying for the work already done or to perform the contemplated work; if any landowner shall feel aggrieved at any such assessments, he may have the right to appear in said court and file his objections to such additional levies for repairs and improvements, and the court shall hear and determine the same as justice and equity shall require.

SOURCES: Codes, 1906, § 1715; Hemingway's 1917, § 4304; 1930, § 4408; 1942, § 4613.

§ 51-31-83. Commissioners may go on lands.

The commissioners, from the time such petitions to organize a district are referred to them by the court or chancellor in vacation, shall have the right and authority to go upon any and all of the lands lying within said district for the purpose of examining the same and making plans, surveys, profiles, and estimates of the kind, character, and cost of said proposed system of drains, and may go upon said lands at any time for the purpose of removing obstructions, cleaning out, and keeping in repair the said ditches. No landowner shall have any power or authority to prevent, hinder, or delay the commissioners in the discharge of their lawful duties in that behalf; and in case such landowner or any other person shall undertake to interfere with, hinder, obstruct, or delay the commissioners in the discharge of their duties, the said commissioners or either of them may file his or their complaint in the chancery court or before the chancellor in vacation. Thereupon said court or chancellor shall cite said party to appear and show cause, if any he has, why he should not be fined for said hindrance or obstruction, and the court or chancellor may fine such party not exceeding twenty-five dollars ($25.00) per day for every day's hindrance caused by him to said commissioners, as for a contempt of the chancery court.

SOURCES: Codes, 1906, § 1717; Hemingway's 1917, § 4306; 1930, § 4410; 1942, § 4615.

§ 51-31-85. Ditches already constructed may be used.

In laying out such proposed work and drains and ditches, the commissioners shall have the right to take and use any ditches heretofore constructed in any part of said district by any landowner owning the same. If any such ditches existing prior to the organization of such district shall be of any value to the said district, the said commissioners shall have the power to allow the said landowner reasonable compensation for the value thereof, which shall be put down on the assessment roll as a credit for ditches already constructed.

SOURCES: Codes, 1906, § 1718; Hemingway's 1917, § 4307; 1930, § 4411; 1942, § 4616.

§ 51-31-87. Compensation for use of other district drains.

After the organization of any drainage district under this chapter or after the filing of a petition to organize any such district, if any other or different drainage district lying adjacent to or above said proposed drainage district, or any district not heretofore organized shall be organized and drain the water from their ditches into the ditches or drains of the said lower drainage district from the lands lying above or adjacent and draining into the said drainage district so organized or petitioned for, the commissioners of such lower district shall ask, demand, and receive from said upper district or adjacent district just compensation for an outlet for the waters of said upper or adjacent district. In case said commissioners of the two districts cannot agree upon the amount to be paid by such district, then the same shall be submitted by petition to the chancery court or chancellor in vacation having jurisdiction of the lower district. Said court or chancellor shall hear the petition on proper notice and shall apportion the cost or amount to be paid, if any, by such upper or adjacent district. This section shall apply to all natural drains which may have been heretofore or which shall hereafter be improved, cleaned out, dredged, and used as a drainage canal or main outlet for any drainage district.

SOURCES: Codes, 1906, § 1720; Hemingway's 1917, § 4309; 1930, § 4413; 1942, § 4618; Laws, 1912, ch. 196.

§ 51-31-89. Passing railroads with canal.

If in the organization of any drainage district and thereafter in the construction of ditches, drains, or other improvements, it shall be necessary to cross under or through any railroad or the right of way thereof, the same may be accomplished in the following manner: Upon filing of the report of the commissioners as to assessments and benefits and damages, they shall make a special report showing the proposed plans, manner, and character of the work as proposed in passing through such right of way, together with an estimate of the costs of same, including all damages that will be sustained by the railroad by virtue of the construction of the proposed work; and upon the hearing of such commissioner's report, it shall be the duty of said railroad company to appear and show cause why said report should not be confirmed, as other parties interested are required to appear and on the same notice. In such showing it shall be the duty of the railroad company to file with the court, on or before the time set for the hearing, its estimate of the costs of the proposed work, including all damage that will be sustained by it by doing the proposed work. The court or chancellor in vacation shall determine the amount of such costs and damages to the railroad, and said finding shall be final and conclusive adjudication of such matters, unless appealed from in the manner provided for appeals under this chapter. The prosecution of an appeal shall not prevent the drainage commissioners constructing the work as proposed through the railroad right of way, whenever in their discretion it is necessary to do said work. Before beginning the construction of such work through such right of way, the drainage commissioners shall pay to the railroad company, or the chancery clerk for it, the amount of damages adjudicated against the district in the decree appealed from.

SOURCES: Codes, 1906, § 1721; Hemingway's 1917, § 4310; 1930, § 4414; 1942, § 4619; Laws, 1912, ch. 196.

Cross References — Rule that drainage ditches may cross highways and railroads, see § 51-29-95.

JUDICIAL DECISIONS

1. In general.

Where in 1913 consent decree had the effect of recognizing the right of drainage district to dig a canal across the right of way of the predecessor of the railroad, but such was necessarily intended to be in accordance with the plans and specifications then before the court for digging of such canal, this gave no rise to an easement in drainage district to several years later, widen and open the canal, without paying damages to railroad which was thereby required to reconstruct this bridge. Gulf, M. & O.R.R. v. Tallahatchie Drainage Dist., 218 Miss. 583, 67 So. 2d 528 (1953).

§ 51-31-91. Notice and damages.

When it shall become necessary, in the course of the construction of the work being done by the drainage commissioners, to pass through said right of way in the manner and according to plans theretofore filed as above provided, it shall be the duty of the drainage commissioners to give notice in writing to said railroad company of its desire to cross said right of way with its construction work on some approximate date, which shall not be less than sixty days from the date of such notice. Said notice shall be served upon any agent or employee of said railroad company upon whom, under the laws of the state, service of process may be had; and the commissioners shall at the same time pay or tender to said railroad company such costs and damages as may have been adjudged against the drainage district, as hereinbefore provided. It shall thereupon be the duty of the railroad company within a reasonable time to complete such construction work across its right of way, according to the aforesaid plans and specifications under the supervision of the engineer employed by said drainage commissioners, or to permit same to be done by the drainage commissioners. Should the railroad company fail, neglect, or refuse to do and perform in good faith said work within the time fixed by said drainage commissioners for the performance thereof, or to permit same to be done, it shall be liable to the drainage district and all persons for any damage it or they may sustain by reason of such failure, and said railroad company may be compelled to perform such work by mandatory injunction issued at the instance of the drainage commissioners. This section shall not be so construed as to prohibit the drainage commissioners from acquiring such right of way by the regular eminent domain proceeding if they so elect, or as otherwise provided in this chapter.

SOURCES: Codes, Hemingway's 1917, § 4311; 1930, § 4415; 1942, § 4620; Laws, 1912, ch. 196.

§ 51-31-93. Railroad may be assessed for benefits.

If, in the organization of any drainage district under this chapter, it shall appear that any railroad company will be benefited by the construction of the proposed work, the drainage commissioners shall have the right to assess the said railroad such amount as they may deem said railroad or railroad company benefited. Said assessment shall be made at the time of assessing the lands of said district, and said railroads shall have the right to appear and make objections as land owners in said district at the time of hearing objections to such assessments.

In determining the amount of such benefits, the court or chancellor in vacation may take into consideration the improvements that might be made by said railroad of a permanent character, and the increased revenue to be gained by the improvement of the lands in said district for agriculture and sanitation, if any can be shown by the construction of such proposed work.

SOURCES: Codes, Hemingway's 1917, § 4312; 1930, § 4416; 1942, § 4621; Laws, 1912, ch. 196.

JUDICIAL DECISIONS

1. In general.

Where a railroad's right of way ran through a drainage district, the railroad was properly assessed for benefits derived from improvements made on the drainage system. Gulf, M. & O.R.R. v. Tallahatchie Drainage Dist., 218 Miss. 583, 67 So. 2d 528 (1953).

RESEARCH REFERENCES

Am Jur. 70C Am. Jur. 2d, Special or Local Assessments §§ 76 et seq.

§ 51-31-95. Drain may cross public road.

If in the construction of such ditches the same shall cross any public road, it shall be the duty of the drainage commissioners to notify the board of supervisors of such county in which such public road is located, at some regular meeting of said board held prior to a day which is thirty days next before the time fixed in such notice for the time at which the proposed work shall be constructed across said public road, stating in such notice the width and depth of such proposed work. It shall be the duty of the board of supervisors to cause to be removed and constructed, at the expense of the county, all bridges necessary to be removed or constructed, same to be done at such time as is reasonable, with a view to the convenience of the public and without unreasonable delay to the prosecution of such work.

Contracts may be made by the board of supervisors for such removal and construction of such bridge or bridges, without first advertising for bids where the cost of any one bridge does not exceed one hundred dollars.

SOURCES: Codes, 1906, § 1722; Hemingway's 1917, § 4313; 1930, § 4417; 1942, § 4622; Laws, 1912, ch. 196.

Cross References — Rule that drainage ditches may cross highways and railroads, see § 51-29-95.

Relocation of public roads due to flood control works, see § 51-35-3.

Authority of supervisors to build roads on rights of way of drainage districts, see §§ 65-7-69, 65-7-71.

JUDICIAL DECISIONS

1. In general.

In an action by a drainage district against a county to recover reimbursement for expenses incurred in the construction of bridges and culverts over two public roads in the county, the county was entitled to judgment where it never approved the construction undertaken by the district and where § 19-3-41 granted jurisdiction over roads, ferries and bridges to the county board of supervisors and §§ 51-29-95 and 51-31-95 left to the determination of the board what constituted suitable bridges across drainage districts and what bridges were necessary to be removed or constructed; neither statute authorized the work performed by the district or a suit for reimbursement. Leflore County v. Big Sand Drainage Dist., 383 So. 2d 501 (Miss. 1980).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:101-92:105 (application, resolution and agreement to connect with district).

§ 51-31-97. Landowners outside of district may use drains.

If the owner or owners of any lands lying outside of a drainage district have made or shall hereafter make connection with the main ditch or drain or with any branch or lateral ditch or drain within the district, or if any such land is drained into the ditches and drains of a drainage district by ditches or drains constructed either before or after the organization of such drainage district, and if in either case the lands outside of such drainage district are benefited by the work done in such drainage district, the owner or owners shall be deemed to have made voluntary application to be included in such drainage district. Thereupon, the commissioners shall make a complaint in writing, stating the description of such land or lands benefited, the amount of benefits, the name of the owner or owners thereof, and the description of the drain or ditch making connection with the ditches as near as may be, and file said complaint in the chancery court where said district was organized. Said court or chancellor in vacation shall fix a day, not less than twenty-five days from the filing of the petition, when it shall hear such complaint; and thereupon the clerk of said court shall give each of the landowners notice of said proceedings by mailing each of them notice of said complaint to their post-office addresses not less than ten days prior to the date for said hearing, or personal service may be served on each of them as provided in ordinary suits not less than five days prior to the date of the hearing. On the hearing of the complaint and the issues joined, if any, if the court or chancellor finds the allegations in the complaint true, it shall decree that such lands, or such parts thereof as are benefited, be joined to said district petitioning. Such lands shall thereafter be a part of said petitioning district lands and shall be assessed and dealt with accordingly. Benefits, damages, and assessments may thereafter be made against such added lands on the same notice and under the same proceedings as against lands in the district originally, and said added lands shall be made to appear on the assessment rolls of the district as other lands of the district.

SOURCES: Codes, 1906, § 1723; Hemingway's 1917, § 4314; 1930, § 4418; 1942, § 4623; Laws, 1912, ch. 196.

JUDICIAL DECISIONS

1. In general.

Petition of drainage district commissioners for authority to repair and improve canals, borrow money and assess a tax against the benefits to the lands located in the district was defective where outside landowners receiving benefits from the drainage system were not made parties. Watson v. Beaver Dam Drainage Dist., 205 Miss. 690, 39 So. 2d 309 (1949); Hobbs v. Moorhead Drainage Dist., 205 Miss. 679, 39 So. 2d 307 (1949).

Petition of drainage district for authority to borrow money to repair drainage system which did not include adjacent landowners who used canals and benefited therefrom was defective since all interested persons where not made parties. Hobbs v. Moorhead Drainage Dist., 205 Miss. 679, 39 So. 2d 307 (1949).

§ 51-31-99. Reassessment if estimate deficient.

If, after the first assessment of benefits, which it is estimated will result from the proposed drainage scheme, has been made it develops that on account of additional work done or to be done the benefits to the whole or any part of the district is or will be greater than was originally assessed, the commissioners may proceed to reassess and apportion the benefits so as to correct the same to conform to the benefits to be received. However, the aggregate value of benefits so assessed shall in no event be less than the original assessment.

Such additional assessment shall be made in the same manner, under the same requirements, and upon the same notice as is provided for making the original assessment.

SOURCES: Codes, Hemingway's 1917, § 4315; 1930, § 4419; 1942, § 4624; Laws, 1912, ch. 196.

JUDICIAL DECISIONS

1. In general.

Laws, 1912, chapter 196, validated the work theretofore done on natural water courses by drainage commissioners, who up to that time had had no authority to do any work on such water courses, and also imposed on counties the duty to replace bridges at the expense of the county; under this law the validation of the work was retrospective, while the requirement as to replacement of bridges was prospective, and therefore a county could recover from a drainage district the cost of replacing bridges previous to the passage of the act. Northern Drainage Dist. v. Bolivar County, 111 Miss. 250, 71 So. 380 (1916).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 42.

CJS. 28 C.J.S., Drains §§ 148-151.

§ 51-31-101. Penalty for injuring drains.

Any person who shall wrongfully or purposely fill up, cut, injure, destroy, or in any manner injure or impair the usefulness of any drain, ditch, or other work constructed under drainage laws shall be guilty of a misdemeanor, may be fined in any sum not exceeding one hundred dollars ($100.00), and shall be liable for double the expense occasioned by repairing the same or removing such obstruction, to be recovered at the suit of the proper drainage district.

SOURCES: Codes, 1906, § 1724; Hemingway's 1917, § 4316; 1930, § 4420; 1942, § 4625.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 51-31-103. Benefit to county farm.

Where a county farm owned by any county lies within any drainage district and would be benefited thereby, the board of supervisors are authorized in their discretion to pay out of the general county fund the pro rata of tax for which such county lands should be taxed if owned by individuals.

SOURCES: Codes, Hemingway's 1917, § 4319; 1930, § 4422; 1942, § 4627.

Cross References — Leasing or buying of land by board of supervisors for county farm, see § 47-1-5.

JUDICIAL DECISIONS

1. In general.

The board of supervisors could, in their discretion, pay out of general county funds the assessment tax levied by drainage district on realty used as county farm and where they ruled against payment of taxes, the realty used could not be liable for the tax. Sunflower County v. Moorhead Drainage Dist., 216 Miss. 190, 62 So. 2d 214 (1953).

Where county superintendent of education leased school land for years 1927 to 1931, inclusive, and tenant went into possession thereof, but no order was entered on minutes of board of supervisors directing or approving lease, the tenancy did not shift liability for payment of drainage taxes from county to tenant under statute imposing liability on lessee. Fighting Bayou Drainage Dist. v. Leflore County, 180 Miss. 223, 177 So. 6 (1937).

§ 51-31-105. Jurisdiction of suits.

The proper chancery court of the county of the defendant district being sued shall have jurisdiction of all suits brought against such district, and between drainage districts suing unless otherwise provided. The chancery court organizing a drainage district shall have exclusive jurisdiction of all suits brought against such district, unless otherwise herein provided.

SOURCES: Codes, Hemingway's 1917, § 4325; 1930, § 4424; 1942, § 4629; Laws, 1912, ch. 196.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4629] is ineffective to preclude a foreign corporation from availing itself of federal diversity jurisdiction to recover on a construction contract performed by it for a drainage district. Baton Rouge Contracting Co. v. West Hatchie Drainage Dist., 279 F. Supp. 430 (N.D. Miss. 1968).

§ 51-31-107. Master may hear and determine causes; report of findings to chancellor.

The chancellor shall have the power to appoint a master as provided by the Mississippi Rules of Civil Procedure to hear and determine any and all matters which, under the provisions of this chapter or any act amendatory thereof, it is the duty of the chancellor to hear and determine. The master shall report his findings to the chancellor for confirmation, such findings to be subject to exceptions in the same manner as other reports of masters are now subject to exceptions, and such masters may continue any such hearings from time to time as the chancellor may do. Said reports may be confirmed at any time and place which may have been designated in the order of reference without further notice.

SOURCES: Codes, Hemingway's 1917, § 4326; 1930, § 4425; 1942, § 4630; Laws, 1912, ch. 196; Laws, 1991, ch. 573, § 112, eff from and after July 1, 1991.

Cross References — Power of chancellor to appoint special commissioner to hear and determine cases, see § 51-29-107.

§ 51-31-109. Expenses of chancellor and master taxed against district.

The chancellor or any master appointed by the chancellor shall be entitled to receive and shall tax against the drainage district, as a part of the costs, all expenses incurred by the chancellor or master on account of hearing, considering, and determining any and all matters connected with the organization of such drainage district. In addition to receiving his traveling and other expenses, the master shall receive such additional compensation as shall be allowed him by the chancellor.

SOURCES: Codes, Hemingway's 1917, § 4327; 1930, § 4426; 1942, § 4631; Laws, 1912, ch. 196.

§ 51-31-111. Additional bond issue.

The drainage commissioners of any county in which a drainage district has been organized and who have sold bonds for 80% of the assessment on the lands in such district, and who have provided for the collection of the remaining twenty per cent of the assessment on the lands in such district in cash within not less than four months, are authorized to issue and sell the bonds, notes, or other objects of indebtedness of the drainage district for the twenty per cent, or any part thereof, which was provided to have been paid in cash and which has not yet been paid.

SOURCES: Codes, Hemingway's 1917, § 4330; 1930, § 4427; 1942, § 4632; Laws, 1912, ch. 202.

Cross References — Sale of drainage district bonds, see § 51-31-69.

Notice of issue to be published within drainage districts with county commissioners, see § 51-31-115.

§ 51-31-113. Interest rate of additional bonds.

The bonds, notes, or other objects of indebtedness issued under the provisions of Section 51-31-111 shall bear interest not exceeding 6% per annum and shall be non-taxable.

SOURCES: Codes, Hemingway's 1917, § 4331; 1930, § 4428; 1942, § 4633; Laws, 1912, ch. 202.

Cross References — Property exempt from taxation generally, see § 27-31-1.

§ 51-31-115. Notice of issue to be published.

Before the sale of any such bonds, notes, or other objects of indebtedness provided for in Sections 51-31-111 and 51-31-113, the drainage commissioners shall publish notice to all parties interested for at least ten days of their intention to issue said additional bonds. Any time after the expiration of the ten days from the action of the chancellor in approving the action of the commissioners in the issuance of such bonds, notes, or evidence of indebtedness, and after ten days from the entry of the order of the chancellor, made in term time or vacation, approving the action of the commissioners in issuing such bonds, notes, or other evidences of indebtedness, any bonds, notes, or other evidences of indebtedness issued and sold by the commissioners shall be a lien on the lands assessed in the drainage district and shall be noncontestable.

SOURCES: Codes, Hemingway's 1917, § 4332; 1930, § 4429; 1942, § 4634; Laws, 1912, ch. 202.

RESEARCH REFERENCES

Am Jur. 15A Am. Jur. Legal Forms 2d, Public Securities and Obligations, § 214:54 (notice of sale of public bonds).

§ 51-31-117. Proceedings in rem.

All proceedings under this chapter are declared to be proceedings in rem. The notices for the organization of a drainage district hereunder and all subsequent notices herein provided for shall be sufficient as notices for the purposes stated, the organization of a district, and the issuance of district bonds as herein provided. The failure of the clerk to send a copy of any notice by registered mail to any nonresident, whose residence is known or unknown, shall not invalidate the proceedings for the organization of any drainage district hereunder or of bonds of the district issued under same; but the court or chancellor in vacation may adjourn the hearing of any case in order to cause other notice to be made, if in his discretion he thinks proper, in order to comply with the requirements of this chapter.

SOURCES: Codes, Hemingway's 1917, § 4329; 1930, § 4430; 1942, § 4635; Laws, 1912, ch. 196.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 20 et seq.

CJS. 28 C.J.S., Drains §§ 51 et seq.

§ 51-31-119. Subdrainage districts authorized.

When one third of the landowners owning a majority of the acreage or a majority of the landowners owning a third of the acreage of real property within a proposed subdrainage district, composed of lands wholly within a drainage district or partly within and partly without such drainage district, shall petition the chancery court, or chancellor in vacation, and shall file a good bond to pay for the expense of the survey of the proposed subdrainage district in case the district is not formed, the said court or the chancellor in vacation shall enter an order directing the drainage commissioners of the county to cause a survey to be made and to ascertain the limits of the region which would be benefited by a proposed system of improvements, giving a general idea of its character, and the estimated costs of drainage, and making such suggestions as to the size of the drainage ditches and their location as the drainage commissioners may deem advisable. They shall file their report with the clerk of the chancery court of the county in which the greater portion of the territory proposed to be included in said subdrainage district is situate.

SOURCES: Codes, 1930, § 4431; 1942, § 4636; Laws, 1922, ch. 214.

Cross References — Formation of subdrainage districts, see § 51-29-115.

Creation of subdistrict within drainage districts with county commissioners, see § 51-31-123.

§ 51-31-121. Notice of subdistrict proceedings.

Upon the filing of said report with the clerk, he shall make an entry to that effect upon the minutes of said court and shall set down and fix the term of court next thereafter convening, or shall set down and fix a day in vacation, as he may deem best, when the court or the chancellor in vacation shall hear said matter. The clerk shall thereupon give notice by publication for two weeks, by two insertions in some newspaper published in the county in which the greater part of the land lies, notifying all persons interested to appear at the term of court or day set in vacation and show cause, if any, why said subdistrict should not be organized or bonds be issued to pay for said work.

However, the day set for hearing shall not be more than sixty days after the first of said notices is published. The said notice by publication shall be full and complete notice to any and all persons interested, and shall confer full and complete power and authority upon the court or chancellor in vacation to act in said matter.

SOURCES: Codes, 1930, § 4432; 1942, § 4637; Laws, 1922, ch. 214.

§ 51-31-123. Creation of subdistrict.

At the time so appointed by the clerk, the court or chancellor in vacation shall hear the said matter and the objections, if any, of any person or firm interested. If the court or chancellor in vacation shall find that said subdrainage district will conduce to the public benefit and that the same should be organized, the court or chancellor in vacation will enter an order to that effect. Nothing in this section shall be construed so as to prohibit the formation and organization of a drainage district wholly or partly within a drainage district already organized. A district independent of the district already organized may be organized where a part or all of the lands are in the district already organized, provided that the petition of the landowners is presented as heretofore specified and asks that said court or chancellor in vacation constitute them a drainage district under the terms of Sections 51-31-119 through 51-31-127, and that the notice set out in Section 51-31-121 has been given. Thereafter proceedings shall be had substantially in conformity with this chapter for the creation of an original drainage district hereunder. When such a subdrainage district is organized as herein provided, it shall have all the rights, privileges and powers of any other district and shall have full power to make and levy assessments, issue bonds independent of any other district, and do all other things now provided by law for the formation and organization of a drainage district under this chapter. When any such district is organized, the several parcels of land thereof that are included within the corporate limits of the original drainage district shall still be liable to the district already organized for all assessments of benefits theretofore made or to an assessment of benefits thereafter levied, if any, or received by them; and in like manner shall receive credit for any work done which is a benefit to the district already organized.

SOURCES: Codes, 1930, § 4433; 1942, § 4638; Laws, 1922, ch. 214.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 14 et seq.
CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-31-125. Subdistricts managed by drainage commissioners.

When a subdrainage district has been established as hereinbefore provided, the county drainage commissioners shall be the commissioners of said subdrainage district; and proceedings to organize subdrainage districts and to do improvements therein shall conform substantially to the provision of this chapter with reference to the organization, doing the improvements, and operating other drainage districts authorized by this chapter. Said commissioners are empowered and authorized to issue bonds of such subdrainage districts, and such bonds shall be so designated. The same proceedings, or as near as practicable the same, shall be had in the issuance of bonds of a subdrainage district as are required in the issuance of bonds of the drainage district in the first instance, as provided in this chapter. The proceeds from the sale of bonds of a subdrainage district shall be applied and used exclusively for doing the work within or for the exclusive benefit of said subdrainage district for the construction of internal drains of said subdrainage district, and in carrying out and perfecting its internal drains.

SOURCES: Codes, 1930, § 4434; 1942, § 4639; Laws, 1922, ch. 214.

§ 51-31-127. Separate financial account kept for subdrainage district.

The drainage commissioners and the treasurer of the main drainage district shall keep a separate account of all funds and expenses and payments of a subdrainage district, so that at any time the account will show the exact financial condition of such subdrainage district, both as to receipts and disbursements.

SOURCES: Codes, 1930, § 4435; 1942, § 4640; Laws, 1922, ch. 214.

§ 51-31-129. Collection of taxes.

All taxes levied under the terms of any drainage law of the State of Mississippi shall be payable at the same time the state and county taxes are payable, and if any taxes so levied under this chapter are not paid at maturity, the tax collector of the county where the land is situated shall, after having advertised said lands for sale for the same length of time and in the same manner as land delinquent for state and county taxes are now required to be advertised, sell the lands so delinquent for taxes thereon, together with all costs and five per centum damages on the amount of taxes for which the land was sold. Said sale shall be separate and distinct from all other sales for taxes, but shall be held at the same place and time where sales of delinquent lands for state and county taxes are held.

SOURCES: Codes, 1930, § 4440; 1942, § 4645; Laws, 1926, ch. 301; Laws, 1934, ch. 227.

Cross References — Enforcement of payment by tax collector, see § 27-41-11.
Collection of taxes, delinquent lands, and settlements, see § 51-29-81.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4645] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 53 et seq.

70C Am. Jur. 2d, Special or Local Assessments §§ 187 et seq.

CJS. 28 C.J.S., Drains §§ 158 et seq.

§ 51-31-131. Delinquent lands.

When lands are offered for sale for unpaid drainage district taxes and no person will bid therefor the amount of taxes, damages, and costs due, the same shall be struck off to the drainage district wherein the land lies, and otherwise dealt with as lands which are sold to the state for delinquent state and county taxes. The drainage commissioners shall be authorized to pay the state and county taxes on lands thus acquired by it, to redeem the same from state and county tax sales, and to collect the money thus paid with the same damage and interest allowed individuals in similar cases under the general revenue laws of the state therein from the date of such payment, upon the redemption of lands from the drainage district sale.

SOURCES: Codes, 1930, § 4441; 1942, § 4646; Laws, 1926, ch. 301.

Cross References — Sale of land for delinquent taxes generally, see § 27-41-59 et seq.

Abatement of lien of drainage district upon sale of land to state for delinquent taxes, see § 29-1-97.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4646] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

§ 51-31-133. Tax lists.

The lists of lands sold by the tax collector to individuals and to the drainage district shall be made as required to be made by the state and county collector for state and county lands, and shall be filed with the clerk of the chancery court within ten days after the tax sale. Each shall have the same force and effect, confer the same rights, and be entitled to the same remedies for redemption and otherwise as lists made for delinquent taxes by the state and county collector for state and county lands. But such title shall be subject to a title acquired under a sale for state and county taxes.

SOURCES: Codes, 1930, § 4442; 1942, § 4647; Laws, 1926, ch. 301.

Cross References — Vesting of title upon listing, see § 27-41-79 et seq.

Redemptions of lands sold for taxes, see § 27-45-1.

Lists of lands sold for taxes generally, see § 29-1-21.

JUDICIAL DECISIONS

1. In general.

Owner of land sold to drainage district for taxes due it has right to redeem land in the event that sale for taxes is decreed to be valid sale and decree of court dismissing bill praying that these tax sales be cancelled as clouds on her title, or if sale be held valid that she be permitted to redeem, on general and special demurrer is denial of owner's right of redemption. Jones v. Abiaca Drainage Dist., 43 So. 2d 577 (Miss. 1949).

Under this section [Code 1942, § 4647] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

§ 51-31-135. Record of tax sales.

A list of conveyances of lands sold to drainage districts for drainage district tax or to individuals shall be recorded in a well-bound and indexed book, which shall be kept in the office of the chancery clerk of the county in which said drainage district is located. It shall be the same book in which other tax sales to individuals are recorded, and shall have the same effect as notice.

SOURCES: Codes, 1930, § 4443; 1942, § 4648; Laws, 1926, ch. 301.

Cross References — Conveyances to individuals of land sold for taxes, see § 27-45-23.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4648] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

§ 51-31-137. Expiration of redemption period.

After two years' time for redemption has expired, the drainage district commissioners may take possession of land sold to the district for said district, and lease or sell any lands which it has acquired at tax sale to any person in the manner that the said commissioners may think is to the best interests of the district.

SOURCES: Codes, 1930, § 4444; 1942, § 4649; Laws, 1926, ch. 301.

Editor's Note — Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the secretary of state.

Cross References — Land on which redemption has expired generally, see § 21-33-75.

Certification to Secretary of State of unredeemed land, see § 27-45-21.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 4649] and other sections, and the Mississippi decisions, levies against land for drainage improvements are tax levies, and, accordingly, levies for the costs of an uncompleted drainage district were taxes rather than assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers of such lands at foreclosure sale. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

§ 51-31-139. District placed under supervisors.

On petition of one third of the landowners owning one half of the land or one half of the landowners owning one third of the land located in any drainage district, the chancery court, if it be satisfied that the petition contains the percentage of the landowners as outlined above, shall set a date and place for a hearing on the matter and order notice given of the time and the place of said hearing, the same to be set in vacation or term time according to the order of the chancellor. The notice shall be given by three weeks' publication in a newspaper published or having general circulation in the county where the drainage district is located, and shall be directed substantially to the landowners, lienholders, bondholders, and all others interested in the drainage district referred to. Said notice shall be complete on the publication of the same in the said newspaper for three consecutive weekly issues, the first notice to be at least three weeks before the date of hearing. At the time and place fixed for the hearing or at any other time or place to which the same shall have been lawfully postponed by the chancellor, the said chancery court, if satisfied that the aforesaid conditions have been fulfilled and that all projects of said drainage district have been completed, shall transfer all the duties, power, and authority of any drainage commission or drainage commissioners of any drainage district lying wholly within one county, and impose the same upon the board of supervisors of the county in which the particular drainage district lies. The board of supervisors of the county in which any such completed drainage project lies shall have charge of maintenance, repair, and upkeep of such completed construction project and shall make report of same annually to the chancery court of the county, but no additional compensation shall be allowed the board of supervisors for the discharge of services hereby imposed. It is provided that on the making of the order of transfer, as above outlined, the compensation and authority of any drainage commissioner or set of drainage commissioners regarding any such drainage district, as above outlined, shall immediately cease on the signing of the decree of transfer above provided for.

It is distinctly provided that this section shall not apply in any manner whatsoever to drainage districts lying in two or more counties of the state.

SOURCES: Codes, 1942, § 4657; Laws, 1932, ch. 186; Laws, 1934, ch. 228.

§ 51-31-141. Procedure for districts to come under this chapter.

Any district which has heretofore been organized, including swamp land districts, or which may hereafter be organized under other statutes may become a district under the terms of this chapter as follows:

If a third of the landowners owning a majority of the acreage or a majority of the landowners owning a third of the acreage of real property within any such district shall petition the chancery court or chancellor in vacation to constitute them a drainage district under the terms hereof, the clerk of the chancery court shall give notice of the application by two weeks' publication in some newspaper published and having a bona fide circulation in the county or counties in which the lands of said district lie, stating the time when said petition will be heard and the object of said petition. All owners of real property within the district shall have the right to appear and contest the said petition, or support the same. The chancery court, or chancellor in vacation, shall hear the evidence and shall either grant the petition or deny the same, as he may deem it most advantageous to the property owners of the district and to the public benefit. If he grants the petition, the said district shall have all the rights and powers and be subject to all the obligations and provisions provided by the terms of this chapter. If the majority of the landholders or the majority of the owners of the acreage therein petition for the adoption of this chapter, the court or chancellor must make an order declaring that such district shall henceforth be governed by the terms of this chapter, and shall appoint commissioners according to its terms, who shall carry into effect without delay the proposed drainage improvements.

SOURCES: Codes, 1930, § 4446; 1942, § 4672; Laws, 1956, ch. 348.

§ 51-31-143. Drainage law construed.

This chapter shall be liberally construed to promote the ditching, drainage, and reclamation of wet, swampy, and overflowed lands. The collection of assessments shall not be defeated by reason of any omission, imperfection, or defect in the organization of any district or in any proceedings occurring prior to the decree of the court confirming assessment of benefits and damages; but said decree shall be conclusive that all prior proceedings were regular and according to law. In case any assessment shall be held to be void for want of notice, the said commissioners may, upon motion, be permitted to give such owner due notice and ask for a time to be set by the court or chancellor in vacation. The court or chancellor shall set such time for hearing any and all objections that said landowner may have to such proceedings and assessment, may make such order in reference thereto as justice may require, and shall assess to such landowner his just proportion of the benefits received by him by such proposed work. Thereupon such assessment as to such landowner shall be conclusive.

SOURCES: Codes, 1906, § 1711; Hemingway's 1917, § 4300; 1930, § 4436; 1942, § 4641.

JUDICIAL DECISIONS

1. In general.

An additional assessment may be made without regard to the present existence of actual and additional material benefits to a particular integrated tract, when it appears "absolutely necessary in order to preserve and maintain the improvements of the district," and the mere fact that landowner was not apparently benefited from the improvement and maintenance of a certain drainage canal in the district because of his location on high land does not excuse him from bearing his just proportion of the costs of removing obstructions and silt from such lower canal in the district. Buchanan v. Red Banks Creek Drainage Dist., 205 Miss. 736, 39 So. 2d 321 (1949).

Failure of clerk to give notice of organization of drainage district to non-resident landowners by registered mail within five days of the first publication of notice does not invalidate further proceedings. Wilkinson v. Lee, 96 Miss. 688, 51 So. 718 (1910).

CHAPTER 33

Provisions Common to Drainage Districts and Swamp Land Districts

Article 1. Provisions Common to Drainage Districts 51-33-1
Article 3. Provisions Common to Swamp Land Districts 51-33-201

ARTICLE 1.

PROVISIONS COMMON TO DRAINAGE DISTRICTS.

SEC.
51-33-1. Soil and water conservation and utilization.
51-33-3. Additional powers for conservation.
51-33-5. Petition for conservation powers.
51-33-7. Creation of district for conservation purposes.
51-33-9. Construction of conservation program.
51-33-11. Additional powers for beneficial use of water.
51-33-13. Cooperative agreements for conservation programs.
51-33-15. Water management district.
51-33-17. Borrowing funds from government agencies.
51-33-19. Funds for repairs and restoration.
51-33-21. Certificates of indebtedness for repairs.
51-33-23. Tax levy for repairs.
51-33-25. Hearing on indebtedness for repairs.
51-33-27. Authority for indebtedness for repairs.
51-33-29. Cooperative agreements with U.S. Corps of Engineers.
51-33-31. Borrowing from Farmers' Home Administration.
51-33-33. Irrigation of farm lands.
51-33-35. Contract for irrigation funds.
51-33-37. Bond issue to fund legal indebtedness.
51-33-39. Refunding bonds.
51-33-41. Payment of refunding bonds.
51-33-43. State sale of tax lands.
51-33-45. District may purchase tax lands.
51-33-47. Lands conveyed to drainage district liable for state and county taxes.
51-33-49. Sale or lease of tax lands.
51-33-51. Sale price of tax lands.
51-33-53. Terms of sale of tax lands.
51-33-55. Terms of lease of tax lands.
51-33-57. Seal required for conveyance of tax lands.
51-33-59. Release of land by lump sum payment.
51-33-61. Release of lands where indebtedness refinanced through Reconstruction Finance Corporation.
51-33-63. Procedure to release lands from Reconstruction Finance Corporation.
51-33-65. Release of lands by agreement with commissioners and bondholders.
51-33-67. Procedure to release lands from bondholders.
51-33-69. Release of lands in districts with more than fifty per cent of lands forfeited to state for taxes.
51-33-71. Procedure to release lands in districts with more than fifty percent tax-forfeited lands.
51-33-73. Payment for release.
51-33-75. Receivership for certain districts.

51-33-77. Proceedings for appointment of receiver.
51-33-79. Duties of receiver; oath; bond; records.
51-33-81. Audit of records.
51-33-83. Payment of assessments by landowners or sale of property.
51-33-85. Compromise of assessments between landowners and bondholders.
51-33-87. Disposition of funds and discharge of receiver.
51-33-89. Receivership as additional management method.
51-33-91. Dissolution of district without construction—time limitation for commencement of proceedings.
51-33-93. Dissolution of district without construction; petition; notice.
51-33-95. Dissolution of district without construction; proceedings; chancery court jurisdiction.
51-33-97. Dissolution of district without construction; claims.
51-33-99. Dissolution of district with construction not requiring maintenance.
51-33-101. Dissolution of district with construction not requiring maintenance; petition; notice.
51-33-103. Dissolution of district with construction not requiring maintenance; proceedings; chancery court jurisdiction.
51-33-105. Dissolution of district by cumulative method.
51-33-107. Dissolution of district by cumulative method; petition.
51-33-109. Dissolution of district by cumulative method; notice and summons.
51-33-111. Dissolution of district by cumulative method; claims.
51-33-113. Dissolution of district by cumulative method; sale of property; orders and decrees; appointment of masters.
51-33-115. Dissolution of district by cumulative method; claims; fees and commissions; contraction of debts.
51-33-117. Dissolution of district by cumulative method; surplus funds; effect of dissolution.
51-33-119. Dissolution of district by cumulative method; appeals.
51-33-121. Law as additional method of dissolution.
51-33-123. Saving statute.
51-33-125. Transfer of powers, duties and responsibilities of dissolved drainage districts with federally funded water impoundment structures to county soil and water conservation districts.
51-33-127. Procedures for transfer of drainage district attributes to county soil and water conservation district; dissolution of drainage district; continuation of maintenance and operation of existing structures.

§ 51-33-1. Soil and water conservation and utilization.

The purpose of Sections 51-33-1 through 51-33-9 is to confer certain additional powers on drainage districts already created or to be created under the laws of the State of Mississippi for the purposes of cooperating with the government of the United States and landowners in soil and water conservation and utilization programs for the further development of the economy of this state.

SOURCES: Codes, 1942, § 4606.5; Laws, 1955, Ex. ch. 92, §§ 1-5; Laws, 1958, ch. 456, § 3; Laws, 1960, ch. 176; Laws, 1966, ch. 228, § 1, eff from and after passage (approved June 11, 1966).

ATTORNEY GENERAL OPINIONS

A drainage district may not adopt regulations requiring any person building or constructing any structure, or developing any land, within the boundaries of the district to submit to the commission plans that have been stamped by an architect, engineer, or other appropriate or qualified person that the plans reflect the project "as built." Nowak, June 14, 2002, A.G. Op. #02-0339.

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:1 et seq.

§ 51-33-3. Additional powers for conservation.

To the end that soil and water conservation measures may be improved, flood control and drainage programs strengthened, and the land and water economy of the state stabilized, the following additional powers are conferred upon presently existing drainage districts in the State of Mississippi, including districts with county commissioners as established under Sections 51-31-1 through 51-31-143, and districts established under Sections 51-29-1 through 51-29-165:

(a) To take necessary measures for prevention of erosion, floodwater, and sediment damage; to further the conservation, development, utilization, and disposal of water; and to adopt necessary regulations, programs, and procedures to accomplish these ends, subject to approval of the chancery court or chancellor and on proper notice to the interested parties as such notice is provided for in the general statutes pertaining to drainage districts.

(b) To cooperate and enter into agreements with and to receive financial and other assistance from state agencies and political subdivisions of the state, other organizations created under state laws, and the government of the United States and agencies thereof to carry out the purposes of Sections 51-33-1 through 51-33-9; to enter into agreements with and to accept contributions from private landowners for the purposes of these sections.

(c) To acquire lands, easements, and rights-of-way in accordance with the provisions of Section 29-1-1 for sites for structures and for the flowage or impoundment of waters, acquisitions for these purposes to be accomplished in the same manner and through the same powers and procedures as under the statutes presently pertaining to drainage districts.

(d) To construct, operate, and maintain works of improvement, including structures and related measures, as are needed to carry out their broadened purposes as set forth herein, subject to approval of the chancery court or chancellor and on proper notice to interested parties as set forth in the drainage district statutes.

(e) To enlarge their boundaries in accordance with the provisions of Section 29-1-1 to permit the construction of additional needed works of improvement, or to construct additional needed works of improvement outside their boundaries, subject to approval of the chancery court and on proper notice to interested parties in the manner set forth in the drainage district statutes.

(f) To make additional assessments and issue bonds for carrying out the purposes of Sections 51-33-1 through 51-33-9 and for constructing, maintaining, and operating any structures or improvements established as provided herein, additional assessments or bond issues to be made in the same manner and through the same procedures as under the statutes presently pertaining to drainage districts, subject to approval of the court or chancellor in the same manner, and on the same notice to the interested parties as in the first instance of approving assessments, bond issues, and benefits; and appeal shall lie from decree as in the first instance, and they shall be final only as decrees are final in the first instance.

SOURCES: Codes, 1942, § 4606.5; Laws, 1955, Ex. ch. 92, §§ 1-5; Laws, 1958, ch. 456, § 3; Laws, 1960, ch. 176; Laws, 1966, ch. 228, § 1; Laws, 1993, ch. 615, § 13, eff from and after July 1, 1993.

Cross References — Additional powers for beneficial use of water; provisions common to Drainage Districts and Swamp Land Districts, see § 51-33-11.

Cooperative agreements between drainage districts for soil and water conservation, see § 51-33-13.

When drainage district becomes water management district, see § 51-33-15.

JUDICIAL DECISIONS

1. In general.

A drainage district is not authorized by this section to condemn land solely for recreational purposes. Terry v. Long Creek Watershed Drainage Dist., 380 So. 2d 1270 (Miss. 1980).

§ 51-33-5. Petition for conservation powers.

Before the additional powers granted by Sections 51-33-1 through 51-33-9 shall become applicable to any drainage district in this state, the commissioners of such district shall file a petition in the chancery court requesting such additional powers as set forth herein, whereupon the chancery clerk shall immediately publish a notice in a newspaper having general circulation in the said drainage district for two successive insertions, giving notice of said petition and designating a date, not less than ten days after the last publication of notice, at which a hearing may be had on said petition; and proceedings shall be conducted in so far as possible in accordance with procedures set forth for determining whether or not the district shall be created in the first instance, and the chancellor shall render his decree accordingly.

SOURCES: Codes, 1942, § 4606.5; Laws, 1955, Ex. ch. 92, §§ 1-5; Laws, 1958, ch. 456, § 3; Laws, 1960, ch. 176; Laws, 1966, ch. 228, § 1, eff from and after passage (approved June 11, 1966).

§ 51-33-7. Creation of district for conservation purposes.

In areas not presently within the boundaries of an existing drainage district, and in areas partially within and partially without the boundaries of existing drainage districts, the real property owners may proceed to organize a drainage district for carrying out the purposes of Sections 51-33-1 to 51-33-9, and such organization of such district may be carried out for said purposes according to any one of the different procedures for organization of drainage districts set forth in chapters 29 and 31 of this title; and after organization such district shall have all the powers vested by law in such district.

SOURCES: Codes, 1942, § 4606.5; Laws, 1955, Ex. ch. 92, §§ 1-5; Laws, 1958, ch. 456, § 3; Laws, 1960, ch. 176; Laws, 1966, ch. 228, § 1, eff from and after passage (approved June 11, 1966).

JUDICIAL DECISIONS

1. In general.

A drainage districts organized after 1955, the year of the passage of Code 1972, §§ 51-33-1 through 51-33-9, came within the purview of the concluding clause of § 51-33-7, and was vested with the additional powers delineated in said sections without filing a petition in chancery court requesting such additional powers. McIntosh v. Rockwell Mfg. Co., 294 So. 2d 188 (Miss. 1974).

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:11-92:24 (creation of districts).

§ 51-33-9. Construction of conservation program.

The purpose of Sections 51-33-1 through 51-33-9 is to enable existing drainage districts or newly created drainage districts as provided herein to enter into cooperative agreements and programs to carry out the purposes of Public Law 566, 83rd Congress of the United States, or other laws of the national Congress pertaining to soil and water conservation and utilization. Said sections are to be given a broad construction to the end that those purposes may be carried out; and to this end all political subdivisions of the State of Mississippi, all agencies and departments of the state government, and all soil conservation districts are authorized to cooperate with, expend funds for, and enter into agreements with drainage districts and any agencies of the United States government for the purposes of carrying out the provisions of said sections and said Public Law 566, 83rd Congress, or other laws of the national Congress pertaining to soil and water conservation and utilization.

However, none of the additional powers granted by Sections 51-33-1 through 51-33-9 shall be exercised except for the purpose of participating in a program or programs authorized under Public Law 566, 83rd Congress of the United States, or other laws of the national Congress pertaining to soil and water conservation and utilization.

SOURCES: Codes, 1942, § 4606.5; Laws, 1955, Ex. ch. 92, §§ 1-5; Laws, 1958, ch. 456, § 3; Laws, 1960, ch. 176; Laws, 1966, ch. 228, § 1, eff from and after passage (approved June 11, 1966).

§ 51-33-11. Additional powers for beneficial use of water.

The general powers granted to drainage districts by the laws under which they were created and those granted to drainage districts under the provisions of Sections 51-33-1 through 51-33-9 are further hereby expanded to permit all drainage districts created under said sections, and all those modified by the application of their provisions, and all drainage districts created in the state to exercise the following additional powers:

(a) To construct, operate, and maintain works of improvement, structures, and related measures needed for the impoundment, diversion, flowage, and distribution of waters for beneficial use as defined in subsection (e) of Section 51-3-3.

(b) To make additional assessments and issue bonds for constructing, maintaining, and operating any structure or improvement established as provided herein, in the same manner as outlined in subsection (f) of Section 51-33-3; to contract with the users of water provided for beneficial use for funds to defray the cost of maintaining dams, diversion structures, flumes, channels, pumping costs, and to provide administrative and other costs incident to the sale and beneficial use of water.

SOURCES: Codes, 1942, § 4606.1; Laws, 1958, ch. 456, § 1.

§ 51-33-13. Cooperative agreements for conservation programs.

It is the intention of Sections 51-33-9 through 51-33-15 to permit all drainage districts to enter into cooperative agreements and programs and cooperate in carrying out the purposes of Public Law 566, 83rd Congress of the United States, or other laws of the national Congress pertaining to soil and water conservation and utilization, as provided in Sections 51-33-1 through 51-33-7, and to implement and give effect to Sections 51-3-1 through 51-3-53 in order to make full beneficial use of available surface water in this state.

SOURCES: Codes, 1942, § 4606.3; Laws, 1958, ch. 456, § 2.

Editor's Note — Section 51-3-53 referred to in this section was repealed by Laws of 1978, ch. 484, § 37, eff from and after July 1, 1978.

§ 51-33-15. Water management district.

Upon the exercise of any power under the provisions of Sections 51-33-1 through 51-33-9 or under the provisions of Sections 51-33-11 through 51-33-15, a drainage district shall be and become known as a "water management district."

SOURCES: Codes, 1942, § 4606.7; Laws, 1958, ch. 456, § 4.

§ 51-33-17. Borrowing funds from government agencies.

Drainage districts existing or hereafter created under the laws of the State of Mississippi and having secured the powers conferred by Sections 51-33-1 through 51-33-9, may borrow funds for any purpose authorized by law from state agencies, political subdivisions of the state, other organizations created under state laws, the government of the United States, and agencies thereof, at an interest rate not to exceed five per cent (5%) per annum. The terms of all such loans are to be approved by the chancery court or the chancellor in vacation. Such loans shall be evidenced by the promissory note of said district and shall be executed in the name of the district by its commissioners. As security therefor said commissioners may pledge and assign the entire revenues of said district, not to exceed the amount of benefits or assessments approved and confirmed against the property of said district.

SOURCES: Codes, 1942, § 4606.6; Laws, 1960, ch. 179.

§ 51-33-19. Funds for repairs and restoration.

The commissioners of any drainage district organized and existing under any law of this state are hereby authorized and empowered to issue and sell the negotiable certificate of indebtedness of such district as herein provided, for the purpose of providing funds with which to clean out, restore, repair, and rehabilitate the whole or any part of the drainage system of such district; or for the purpose of cooperating with the United States or any agency thereof in such works. No such certificates of indebtedness shall be so issued for the purpose of constructing any new ditches or new works of improvement in any such district.

SOURCES: Codes, 1942, § 4609-01; Laws, 1946, ch. 271, §§ 1-5; Laws, 1962, ch. 159.

Cross References — Sale of drainage district bonds, see § 51-31-69.
Power of commissioners to lay out and maintain drains, see § 51-31-73.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 36.

CJS. 28 C.J.S., Drains §§ 87 et seq.

§ 51-33-21. Certificates of indebtedness for repairs.

Such certificates of indebtedness shall in no case be issued in a principal amount which, when added to any outstanding certificates of indebtedness issued hereunder, will exceed fifteen per centum (15%) of the total amount of benefits assessed and confirmed against the land and other property within any such district in connection with the original construction of the drainage system therein which is to be so cleaned out, restored, repaired, and rehabilitated, in whole or in part. Such certificates of indebtedness shall bear such date or dates, shall mature at such time or times not exceeding sixty (60) months from the date thereof, shall bear interest at such rate or rates not exceeding eight per centum (8%) per annum, payable semiannually, shall be of such denomination or denominations, shall be payable at such place or places within or without the State of Mississippi, and shall be sold in such amount or amounts and at such price or prices not less than their par value and accrued interest, all as shall be determined by resolution of such commissioners.

SOURCES: Codes, 1942, § 4609-01; Laws, 1946, ch. 271, §§ 1-5; Laws, 1962, ch. 159; Laws, 1974, ch. 361, § 2, eff from and after passage (approved March 14, 1974).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 36.

CJS. 28 C.J.S., Drains §§ 87 et seq.

§ 51-33-23. Tax levy for repairs.

For the purpose of providing for the payment of the principal of and the interest on any certificates of indebtedness issued hereunder, there shall annually be levied upon all lands and other property within such district, in proportion to the benefits assessed and confirmed thereon as aforesaid, such a rate of taxation as shall be sufficient to provide for the payment of such principal and interest when due, making due allowance for delinquencies in the payment of such taxes and costs of collection. Such levy shall be made in the same manner and at the same time as and when other tax levies are required by law to be made for such district; and such taxes shall be extended upon the tax books of such district and shall be secured, enforced, and collected at the same time and in the same manner and by the same officials as other taxes of such district are secured, enforced, and collected. All taxes levied hereunder are hereby declared to be taxes for maintenance purposes and shall not diminish in any manner the amount of assessed benefits in any such district which is otherwise available for the payment of any outstanding bonds of such district.

SOURCES: Codes, 1942, § 4609-01; Laws, 1946, ch. 271, §§ 1-5; Laws, 1962, ch. 159.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 40.
CJS. 28 C.J.S., Drains § 102.

§ 51-33-25. Hearing on indebtedness for repairs.

Before issuing any certificates of indebtedness hereunder, the commissioners of such district shall give notice of their intention to do so and shall cause such notice to be published in some newspaper having a general circulation in each county wherein such district is situated. Such publication shall be made once each week for two consecutive weeks prior to the date to be named therein, when the commissioners shall meet to hear objections of any interested person as to why such certificates of indebtedness should not be issued and taxes levied for the payment thereof, as herein provided. At the time and place fixed for the holding of such hearing, the commissioners of such district shall hear and act upon all such objections in a summary manner, and their disposition thereof shall be final and conclusive on all parties.

SOURCES: Codes, 1942, § 4609-01; Laws, 1946, ch. 271, §§ 1-5; Laws, 1962, ch. 159.

§ 51-33-27. Authority for indebtedness for repairs.

Sections 51-33-19 through 51-33-27 shall be deemed to be full and complete authority for the issuance of certificates of indebtedness of drainage districts; and none of the present restrictions, requirements, conditions, or limitations of law applicable to the borrowing of money by drainage districts shall apply to the issuance and sale of certificates of indebtedness under said sections. No proceedings shall be required for the issuance of such certificates other than those provided for and required therein, and all powers necessary to be exercised by the commissioners of any such drainage district in order to carry out the provisions of said sections are hereby conferred.

SOURCES: Codes, 1942, § 4609-01; Laws, 1946, ch. 271, §§ 1-5; Laws, 1962, ch. 159.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 36.
CJS. 28 C.J.S., Drains §§ 87 et seq.

§ 51-33-29. Cooperative agreements with U.S. Corps of Engineers.

Drainage districts already created or to be created under the laws of the State of Mississippi are hereby authorized and empowered to enter into cooperative agreements with the U.S. Corps of Engineers to carry out the purposes for which the districts were created, including the power to contract with the said Corps of Engineers for the construction, alteration, changing, or cleaning out of any stream or levee, with the power in the district acting through its commissioners to authorize the letting of contracts therefor by the Corps of Engineers rather than the district.

This section is additional and supplemental to any other statutes of this state affecting drainage districts, and the powers herein conferred affect only the authority of drainage districts to contract with the U.S. Corps of Engineers, as herein stated.

SOURCES: Codes, 1942, § 4606.4; Laws, 1964, 1st Ex. Sess. ch. 14.

§ 51-33-31. Borrowing from Farmers' Home Administration.

Drainage districts already created or to be created under the laws of this state are hereby authorized and empowered to borrow money from the Farmers' Home Administration, an agency of the United States, to be used for the purposes for which said districts are created and upon such terms as may be agreed upon by the district and the Farmers' Home Administration.

This section is additional and supplemental to any other statutes of this state affecting drainage districts, and the powers herein conferred affect only the authority of drainage districts to contract with the Farmers' Home Administration as herein stated.

SOURCES: Codes, 1942, § 4606.4; Laws, 1964, 1st Ex. Sess. ch. 14.

§ 51-33-33. Irrigation of farm lands.

All drainage districts of this state may, in the discretion of the drainage commissions of said district, permit the use of water from the drainage canals and the putting into drainage canals of water from natural bodies of water or streams, for the purpose of irrigation of farm lands, under such restrictions as the districts may impose when, in the judgment of the commissioners acting on the advice of the engineer of the district or any other competent engineer employed by it, such permit or permits will not be detrimental to the district or injurious to the landowners therein.

SOURCES: Codes, 1942, § 4673.5; Laws, 1950, ch. 425; Laws, 1952, ch. 309; Laws, 1954, ch. 155, § 1.

§ 51-33-35. Contract for irrigation funds.

The drainage commissioners of all drainage districts of this state are hereby authorized, for the purpose of irrigation of farm lands as set out in Section 51-33-33, to contract with the users thereof for the funds with which to provide the water and maintain the ditches for irrigation purposes authorized by Sections 51-33-33 and 51-33-35. However, no contract shall be made whereby the drainage of the lands composing the drainage district, the canals or ditches of which are used for irrigation purposes as herein authorized, shall be destroyed or impaired, it being the purpose and intent of said sections to authorize the use of said canals and ditches for irrigation purposes only in such manner as will not destroy or impair the original and primary purpose of the district to afford drainage to the lands within the district.

SOURCES: Codes, 1942, § 4673.7; Laws, 1954, ch. 155, § 2.

§ 51-33-37. Bond issue to fund legal indebtedness.

For the purpose of funding or paying any legal indebtedness, now or hereafter outstanding, of any drainage district organized and existing under any law or laws of the state of Mississippi or that may be hereafter organized under any law of the state, to the extent that same when added to the outstanding bonded indebtedness of the district shall not exceed the balance due to the district on the assessment of land of the district, the drainage commissioners and court for such district may issue bonds of the district aggregating such amount, provided that interest on such indebtedness may not be calculated against the district in determining the amount of such indebtedness. Such funding bonds shall be of such denominations, shall mature at such time or times not exceeding fifty (50) years from their date, shall be issued in such manner, amount or amounts, and shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, payable semiannually, as the administrative or governing authority of the district may determine. Such bonds may be sold at such price and in such manner as the administrative or governing authority may determine, subject, however, to the approval of the court. Any discount or expense resulting from the sale of such funding bonds may be paid out of any available funds of the district. Such funding bonds shall be signed and executed by the drainage commissioners in charge of the district. However, before issuing such funding bonds hereunder, the administrative or governing authority of such district shall give notice of its intention to do so and shall cause such notice to be published in some newspaper having a general circulation in the county of such district. Such publication shall be made once each week for three (3) consecutive weeks prior to the date, to be named therein, when the administrative or governing authority shall meet to hear the objections of any interested person as to why such funding bonds should not be issued and taxes levied, within the amount of the assessed benefits, for the purpose of paying the principal and interest on such bonds. At the time and place fixed for the holding of such hearing, the administrative or governing authority of such district shall hear and dispose of all such objections in a summary manner. Any objector having filed his objections prior to the hearing may appeal from the decision of such administrative or governing authority to the chancery court having jurisdiction of the affairs of said district, on making and filing, within ten (10) days from date of hearing, appeal bond in the penal sum of two hundred dollars ($200.00) approved by the clerk of said chancery court, conditioned to pay all costs which may be adjudged against objector.

Taxes for the payment of such bond obligations issued hereunder shall be levied annually on and against the land of the district, as is provided for the levying of other taxes of the district and in proportion to the assessed benefits of the district.

Notwithstanding the foregoing provisions of this section, bonds referred to hereinabove may be issued pursuant to the supplemental powers and authorizations conferred by the provisions of the registered bond act, being Sections 31-21-1 through 31-21-7.

SOURCES: Codes, 1930, § 4439; 1942, § 4644; Laws, 1984, ch. 506, § 8, eff from and after passage (approved May 15, 1984).

Cross References — Uniform system for issuance of negotiable notes or certificates of indebtedness, see §§ 17-21-51.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

RESEARCH REFERENCES

ALR. Power of governmental unit to issue bonds as implying power to refund them. 1 A.L.R.2d 134.

§ 51-33-39. Refunding bonds.

For the purpose of refunding bonded indebtedness, now or hereafter outstanding, of any drainage district organized and existing under any law or laws of the state of Mississippi or that may be hereafter organized under any law of the state, whenever such drainage district is or may hereafter become unable to pay all or any part of the principal and interest on its bonds, or whenever the best interest of the district may require, the drainage commissioners and court for such district may issue refunding bonds of such district in an amount which shall not exceed the aggregate of the amount of bonds to be refunded and accrued interest thereon. Such refunding bonds shall be of such denomination, shall mature at such time or times not exceeding fifty (50) years from their date, shall be issued in such manner, amount or amounts, and shall not bear a greater overall maximum interest rate to maturity than that allowed in Section 75-17-101, payable semiannually, as the administrative or governing authority of the district may determine. Such refunding bonds may be exchanged for the bonds to be refunded, upon consent of the holders thereof, or may be sold at such price and in such manner as the administrative or governing authority may determine, subject however to the approval of the court. Any discount or expense resulting from the sale of such refunding bonds may be paid out of any available funds of the district. If the outstanding bonds shall not have matured, they may be refunded only with the consent of the holder or holders thereof, which consent shall be sufficiently evidenced by the surrender of the bonds to be refunded. Such refunding bonds shall be signed and executed by the drainage commissioners in charge of the district. However, before issuing any refunding bonds hereunder, the administrative and governing authority of such district shall give notice of its intention to do so and shall cause such notice to be published in some newspaper having a general circulation in the county of such district. Such publication shall be made once each week for three (3) consecutive weeks prior to the date, to be named therein, when the administrative or governing authority shall meet to hear the objections of any interested person as to why such refunding bonds should not be issued and taxes levied, in addition to the assessed benefits, for the purpose of paying interest on such bonds. At the time and place fixed for the holding of such hearing, the administrative or governing authority of such district shall hear and dispose of all such objections in a summary manner, and its disposition thereof shall be final and conclusive on all parties.

SOURCES: Codes, 1930, § 4437; 1942, § 4642; Laws, 1924, ch. 262; Laws, 1928, ch. 236; Laws, 1984, ch. 506, § 9, eff from and after passage (approved May 15, 1984).

Cross References — Refunding of bonds generally, see § 31-15-1 et seq.

Sale of bonds by drainage district, see § 51-31-69.

Limitation on the maximum interest rate to maturity on obligations issued under the provisions of this section, see § 75-17-101.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 198 et seq.

§ 51-33-41. Payment of refunding bonds.

The administrative or governing authority of each such district issuing refunding bonds as above provided and the board of supervisors of the county or counties shall annually levy a tax upon all lands and property subject thereto in such district, in proportion to the benefits originally assessed and sufficient to pay the interest on the bonds and the principal of any such bonds becoming due the ensuing year, and shall certify the amount of such tax to the tax collector or tax collectors of the county or counties in which the lands are situated and assessed. In levying the tax, account shall be taken of all payments theretofore made for taxes on each specific tract of land in the district, so that each tract of land within the district may ultimately be made to bear its equitable and just proportion of taxes for the district according to the original assessment against it. Such taxes shall be collected and the levy and payment thereof enforced at the time and in the manner and by the means now or hereafter provided for the collection of drainage and levee taxes in such district. The total of such taxes, exclusive of taxes levied for interest on such bonds and on the bonds to be refunded, shall not exceed the benefits assessed upon any tract of land in said district.

SOURCES: Codes, 1930, § 4438; 1942, § 4643; Laws, 1928, ch. 49.

§ 51-33-43. State sale of tax lands.

No sale of tax lands in any drainage district organized under any of the laws of this state shall be made unless and until the state land commissioner is furnished by the applicant with a certificate signed by the president or secretary of the board of commissioners or other governing authority of the said drainage district in which such land is situated, certifying that arrangements, satisfactory to said board of commissioners for the payment of the drainage taxes accruing upon said land subsequent to the sale for delinquent taxes have been made with the applicant.

SOURCES: Codes, Hemingway's 1917, § 4469; 1930, § 4488; 1942, § 4714; Laws, 1912, ch. 195; Laws, 1926, ch. 303; Laws, 1934, ch. 227; Laws, 1936, ch. 174.

Editor's Note — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "and office" shall mean the Secretary of State.

RESEARCH REFERENCES

CJS. 28 C.J.S., Drains §§ 169-172.

§ 51-33-45. District may purchase tax lands.

The board of drainage commissioners of any drainage district organized under any of the drainage laws of this state are hereby authorized to purchase from the state any lands lying within such drainage district which have been sold to the state for delinquent taxes and the title to which, at the time of the filing of the application to purchase, has matured in the state. The board of drainage commissioners of any such drainage district desiring to purchase any such lands from the state shall file an application for the purchase of such lands with the land commissioner. The land commissioner with the approval of the governor may sell any such lands to the board of drainage commissioners of such drainage district at such price as may be authorized by law for the sale of lands to individuals, and such sale shall be made upon the same terms and conditions as are provided by law for the sale of lands to individuals. However, the limitation imposed by law upon the quantity of state forfeited tax lands which may be sold to a single individual shall not apply to sales of lands in drainage districts to the board of drainage commissioners under the provisions of this section. The board of drainage commissioners of such drainage districts are hereby authorized to appropriate money out of any funds on hand belonging to the drainage district for the payment of the purchase price of such land.

The patents to such lands shall be issued to the board of drainage commissioners of such drainage district in the form and manner prescribed by law; and the proceeds of all such sales shall be paid into the state treasury in the manner provided by law.

SOURCES: Codes, 1942, § 4651; Laws, 1935, ch. 61; Laws, 1936, ch. 298.

Editor's Note — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the Secretary of State.

Cross References — Tax land may be sold to drainage district, see § 29-1-49.

Quantity of public lands, buildings and property purchased by one person, see § 29-1-73.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 4651] and other sections (Code 1942, §§ 4090, 4695, 4714), declaring that the lien on the land for the collection of the assessed benefits shall not be abated, are all designed for the protection of the drainage district and to prevent an impairment of its contract with the bondholders who may have supplied the funds for the draining and improvement of the lands against which the lien attaches. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

A county, on becoming a voluntary purchaser of drainage district lands encumbered by a statutory judgment for assessments, does not acquire such lands free of the lien despite the fact that the lands are to be used for a public purpose. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

§ 51-33-47. Lands conveyed to drainage district liable for state and county taxes.

When lands are purchased by the board of drainage commissioners of any drainage district under the provisions of Section 51-33-45, such land shall be liable thereafter for the state and county taxes levied and assessed against the same to the same extent as if such lands were owned by a natural person or private corporation. It shall be the duty of the tax assessor to assess such lands for taxes in the same manner as other lands are assessed; and if the taxes are not paid when due, it shall be the duty of the tax collector to sell said land for the delinquent taxes due and unpaid at the time and in the manner provided by law for the sale of lands for delinquent taxes.

SOURCES: Codes, 1942, § 4087; Laws, 1936, ch. 174.

Cross References — Lands struck off to municipality, see § 21-33-69.

Purchase of land by municipality at state tax sale, see § 21-33-73.

Land on which redemption has expired, see § 21-33-75.

Property exempt from taxation, see § 27-31-1.

Duty of Secretary of State to transmit list of lands for which patents have been issued, see § 27-35-65.

Assessment for taxes of land sold by state, see § 29-1-83.

§ 51-33-49. Sale or lease of tax lands.

The board of commissioners of any drainage district operating under any of the laws of this state may sell, lease, or rent, on the terms and conditions as hereinafter set out, the lands located within the limits of said district which have been heretofore purchased or may hereafter be purchased from the State of Mississippi, or such lands heretofore or hereafter purchased at any tax sale after the time for redemption has expired.

SOURCES: Codes, 1942, § 4652; Laws, 1936, ch. 297.

JUDICIAL DECISIONS

1. In general.

A drainage district with local commissioners is a subdivision of the state government with limited jurisdiction and it has only such powers as are expressly granted to it by the statute or as may be necessarily implied from such legislation. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

A drainage district has no express power or implied power to buy an undivided interest of land except for drainage purposes. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

While tenants in common may be required to bear their proportionate share of expenditures and disbursements and to pay off proportionately the purchase price for outstanding titles and claims, a drainage district has not the power to spend funds to meet these obligations as a tenant in common with others. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

§ 51-33-51. Sale price of tax lands.

Any lands purchased by any drainage district from the State of Mississippi shall not be sold by said district so purchasing the same for less than the amount paid by said district to said state therefor. However, except as provided in Section 51-29-81, any lands purchased by any drainage district at any delinquent tax sales, title to which has matured in the district, shall not be sold by said district so purchasing the same for less than the amount paid therefor by said district at said tax sale plus the amount of all other taxes (exclusive of interest, damages, penalties, and costs) which would have accrued to said lands during the two-year period immediately following the date of sale of said lands for delinquent taxes had the same not been sold therefor.

SOURCES: Codes, 1942, § 4653; Laws, 1936, ch. 297.

§ 51-33-53. Terms of sale of tax lands.

The lands authorized to be sold under the terms of Sections 51-33-49 through 51-33-57 may be sold by the commissioners of the district acquiring the same on such terms and conditions as the board of commissioners of the drainage district selling said lands may designate for the sale thereof in an order to be duly adopted by them and spread on their minutes; however, the said lands shall not be sold for less than the amount set out under Section 51-33-51, and at least one third of the purchase price of said lands shall be paid in cash to the district on the day that the deed is executed and delivered by the commissioners of said district to the purchaser thereof. The board of commissioners of any drainage district selling any lands which are authorized to be sold under the terms of said sections may accept at par value as payment or as part payment of the purchase price thereof any outstanding past-due bonds or coupons of said district selling said lands.

SOURCES: Codes, 1942, § 4654; Laws, 1936, ch. 297.

§ 51-33-55. Terms of lease of tax lands.

The lands authorized to be leased or rented under the terms of Sections 51-33-49 through 51-33-57 may be leased or rented by the board of commissioners of the drainage district owning the same for a term not to exceed three years at such annual rental and on such terms and conditions as may be prescribed and designated for the lease or rental thereof by an order to be duly adopted by the board of commissioners of said district and entered on their minutes.

SOURCES: Codes, 1942, § 4655; Laws, 1936, ch. 297.

§ 51-33-57. Seal required for conveyance of tax lands.

The deed conveying any lands authorized to be sold by any drainage district under the terms of Sections 51-33-49 through 51-33-57 and any lease contract leasing any lands of any drainage district authorized to be leased under the terms of said sections shall be made under the seal of the drainage district selling or leasing the same, and the same shall be signed for said drainage district by the president and secretary, respectively, of the board of commissioners of the drainage district so selling or leasing the same.

SOURCES: Codes, 1942, § 4656; Laws, 1936, ch. 297.

§ 51-33-59. Release of land by lump sum payment.

Any owner of land situated in any drainage district of the State of Mississippi, which has an outstanding bonded indebtedness, may secure the release of his land or any part thereof from the lien of the assessment of benefits thereon for drainage purposes by paying to the drainage commissioners the full amount of the outstanding assessed benefits against his property or any part thereof. The drainage commissioners or their duly authorized officer, upon receipt of said fund, shall execute to the property owner a full release of his land from the lien of said assessment and acknowledge said release, which may be recorded by the owner in the office of the chancery clerk of the county where said land is situated. However, nothing herein shall have the effect of releasing any land situated in a drainage district from its liability for annual maintenance taxes as now or which may hereafter be levied.

SOURCES: Codes, 1942, § 4658; Laws, 1938, ch. 254.

§ 51-33-61. Release of lands where indebtedness refinanced through Reconstruction Finance Corporation.

In any drainage district of the State of Mississippi which has an outstanding bonded indebtedness which has been refunded through the Reconstruction Finance Corporation of the United States, and in which all of said refunded indebtedness is owned by the Reconstruction Finance Corporation of the United States, any landowner may secure the release of his lands, or any part thereof, from the lien of the assessment of benefits thereon for drainage purposes by paying to the drainage commissioners, to be by them paid to the Reconstruction Finance Corporation, such an amount as may be agreed upon by the said drainage commissioners and the Reconstruction Finance Corporation.

SOURCES: Codes, 1942, § 4659; Laws, 1938, ch. 257.

§ 51-33-63. Procedure to release lands from Reconstruction Finance Corporation.

Any landowner desiring to take advantage of Sections 51-33-61 and 51-33-63 shall first make application to the drainage commissioners of the district in which his land is located, and it shall thereupon be the duty of the drainage commissioners of such drainage district to enter such application on the minutes of such drainage district and to apply to the Reconstruction Finance Corporation to determine the amount required to be paid for the release of such lands from the lien of said assessment of benefits thereon. After the amount required to be paid for the release of such lands from the lien of said assessment of benefits shall have been determined and agreed upon by the commissioners and the Reconstruction Finance Corporation, the commissioners, with the approval of the chancery court or other court in which the affairs of the drainage district are being administered, or with the approval of the chancellor in vacation, shall be authorized to accept the amount thus agreed upon in full satisfaction and settlement of the lien of said assessment of benefits on said land. Upon said amount being paid by such landowner to the drainage commissioners, such land shall be released from such assessment of benefits by proper order spread upon the minutes of said drainage district, and the amount paid shall be immediately remitted by the drainage commissioners to the Reconstruction Finance Corporation to be applied by it to such bonded indebtedness. The written consent of the Reconstruction Finance Corporation shall also be spread upon the minutes of such drainage district. Nothing herein shall have the effect of releasing any land situated in a drainage district from its liability for annual maintenance taxes as now or which may hereafter be levied.

SOURCES: Codes, 1942, § 4660; Laws, 1938, ch. 257.

§ 51-33-65. Release of lands by agreement with commissioners and bondholders.

In any drainage district of the State of Mississippi which has an outstanding bonded indebtedness, any landowner may secure a release of his lands, or any part thereof, from the lien of the assessment of benefits thereon for drainage purposes by paying to the drainage commissioners such an amount as may be agreed upon by the drainage commissioners and the owners of all outstanding bonds of such drainage district.

SOURCES: Codes, 1942, § 4660-01; Laws, 1944, ch. 302, § 1.

§ 51-33-67. Procedure to release lands from bondholders.

Any landowner desiring to take advantage of Sections 51-33-65 and 51-33-67 shall first make application to the drainage commissioners of the drainage district in which his land is located, and it shall thereupon be the duty of the drainage commissioners of such drainage district to enter such application on the minutes of such drainage district and to apply to the owners of all outstanding bonds of such drainage district to determine the amount required to be paid for the release of such lands from the lien of said assessment of benefits thereon. After the amount required to be paid for the release of such lands from the lien of said assessment of benefits shall have been determined and agreed upon by the commissioners and the owners of all outstanding bonds, the commissioners, with the approval of the chancery court or other court in which the affairs of the drainage district are being administered, or with the approval of the chancellor in vacation, shall be authorized to accept the amount thus agreed upon in full satisfaction and settlement of the lien of said assessment of benefits on said land, and to execute and deliver to the landowner a release and quitclaim deed releasing the land from the lien of the assessment of benefits of such drainage district upon payment by the landowner of the amount agreed upon, which amount shall be deposited in the bond and interest fund of such drainage district. The written consent of all owners of the outstanding bonds of such drainage district, together with the order of the board of commissioners authorizing the execution and delivery of the release and quitclaim deed for and on behalf of the drainage district, shall be spread upon the minutes of such drainage district. Nothing herein shall have the effect of releasing any land situated in a drainage district from its liability for annual maintenance taxes as now or which may hereafter be levied.

SOURCES: Codes, 1942, § 4660-02; Laws, 1944, ch. 302, § 2.

§ 51-33-69. Release of lands in districts with more than fifty per cent of lands forfeited to state for taxes.

In any drainage district in the State of Mississippi in which more than fifty per cent of the land in such drainage district has prior to March 31, 1944, been forfeited to the state for taxes, the title thereto has matured in the state, and title to which is on said date in the State of Mississippi, and which has an outstanding bonded indebtedness, any landowner may secure the release of his lands, or any part thereof, from the lien of the assessment of benefits thereon for drainage purposes by paying to the drainage commissioners, either in cash, bonds, or interest coupons of such drainage district, or by credit on judgments rendered against the district for bonds and interest coupons, such an amount as may be determined as herein provided.

SOURCES: Codes, 1942, § 4660-10; Laws, 1944, ch. 303, § 1.

§ 51-33-71. Procedure to release lands in districts with more than fifty percent tax-forfeited lands.

Any landowner desiring to take advantage of Sections 51-33-69 through 51-33-73 shall first make application to the drainage commissioners of the district in which his land is located, giving the description of the land sought to be released and whether he desires to pay for the release of such land in cash, or with bonds or coupons, or by credit on judgment rendered against the district for bonds and interest coupons. It shall thereupon be the duty of the drainage commissioners of such district to enter such application upon the minutes of the district and determine and enter upon such minutes the amount which the drainage commissioners find to be a reasonable cash value for the release of such lands. They shall advise such landowner of their action and, if such landowner shall agree in writing to pay such amount, the drainage commissioners shall thereupon notify by registered mail the bondholders of the district, or so many of them as they may be able to ascertain the address of, of such application and request the approval of such bondholders of the release of such land. If the holders of as much as seventy-five per cent of the outstanding bonded indebtedness of the district, including bonds and coupons for which judgment has been rendered against the district but not including bonds or coupons which have become barred by the statutes of limitation, approve such release in writing, the drainage commissioners shall file a petition in the chancery court of the county in which the affairs of the district are being administered, requesting the approval of said court or the chancellor in vacation of the release of such land. They shall state in such petition the description of the land sought to be released, the price to be paid for such release, how such payment is to be made, and the name and address of all known bondholders. There shall be attached to such petition the written approval of such of the bondholders as have approved the release of such land. Upon the filing of such petition the clerk of said court shall fix a day for the hearing thereof, not less than ten days nor more than two weeks from the date of the filing of such petition, and shall cause not less than seven days notice of such hearing to be given by publication in at least one issue of a public newspaper published in the county in which such petition is filed, a copy of which notice shall be mailed by the clerk to each of the known bondholders at the address stated in the petition. The notice so published and mailed shall state the number of acres of land sought to be released, the name of the owner thereof, and the amount to be paid for the release, and shall advise that the matter will be heard at the time and place fixed. Upon the hearing of such petition all bondholders and landowners of the district shall have the right to appear and object, and if the court or the chancellor in vacation be satisfied that the amount which the commissioners have found to be the reasonable cash value for the release of such land is the reasonable cash value thereof and that it would be to the best interest of all bondholders and all others interested that the property be so released, the court or the chancellor in vacation shall enter a decree approving the release of such land; and the drainage commissioners shall be authorized to accept the amount in full settlement and satisfaction of the lien of said assessment of benefits on said land. Upon such amount being paid by such landowners to the drainage commissioners, such land shall be released from such assessment of benefits by proper order spread upon the minutes of such drainage district, and the president and secretary of the board of drainage commissioners of the district shall execute and deliver to the landowner a proper release of said land. Nothing herein shall have the effect of releasing any land situated in a drainage district from its liability for annual maintenance taxes as now or which may hereafter be provided.

SOURCES: Codes, 1942, § 4660-11; Laws, 1944, ch. 303, § 2.

§ 51-33-73. Payment for release.

The amount required to be paid to obtain the release provided for in Sections 51-33-69 through 51-33-73 may be paid in cash, bonds, interest coupons of such drainage district, or by credit on any judgment rendered against the district on defaulted bonds and coupons; however, the same shall not be paid by any bonds or interest coupons which have become barred by the statutes of limitation of the State of Mississippi. If the amount paid be in cash, the drainage commissioners shall deposit the same in a special fund to be used in paying the bonded indebtedness of the district; but if the release be paid for in bonds or coupons or by credit on judgment against the district, the same shall immediately be cancelled by the drainage commissioners.

SOURCES: Codes, 1942, § 4660-12; Laws, 1944, ch. 303, § 3.

§ 51-33-75. Receivership for certain districts.

Whenever any drainage district organized under the laws of this state shall cease to function in the manner provided by law for a period of two or more years by failing to levy and collect the annual assessments made and pledged by it to the payment of its bonded indebtedness, or by failing to function as an organized body, or shall suffer its bonded indebtedness or a substantial part thereof to be in default and so remain for a period of two or more years, then, in either or all of such events, any holder of any of the outstanding and past due bonds issued by said drainage district or of judgments based upon said bonded indebtedness shall have the right to petition the chancery court of the county in which said drainage district or the greater part thereof is situated, for the appointment of a receiver for said drainage district.

SOURCES: Codes, 1942, § 4671-01; Laws, 1952, ch. 308, § 1.

Cross References — Dissolution of drainage district, see § 51-33-99 et seq.

§ 51-33-77. Proceedings for appointment of receiver.

Upon the filing of petition, process may be had on all interested persons by publication of summons as provided by the Mississippi Rules of Civil Procedure directed to the landowners, bondholders, and creditors of said drainage district commanding them to appear before the chancery court at a place named within such chancery court district on a day certain in termtime or before the chancellor in vacation and show cause, if any they can, why a receiver shall not be appointed for said drainage district. Upon the hearing of said petition, if it shall be proven that any or all of said allegations as set forth herein and alleged in said petition are true, the court shall appoint the State Auditor of Public Accounts as receiver for said drainage district.

SOURCES: Codes, 1942, § 4671-02; Laws, 1952, ch. 308, § 2; Laws, 1991, ch. 573, § 113, eff from and after July 1, 1991.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 51-33-79. Duties of receiver; oath; bond; records.

The bond of the state auditor of public accounts, as said auditor, is hereby fixed to be the bond of said state auditor of public accounts as receiver hereunder; and the oath of office taken by said state auditor of public accounts shall be sufficient oath to be required as receiver hereunder. It is hereby fixed to be the duty of the state auditor of public accounts to serve and qualify as receiver under Sections 51-33-75 through 51-33-89, and upon being appointed hereunder he shall discharge all the duties heretofore required of the drainage commissioner, other duties prescribed by said sections, and orders of the court; and he shall be subject to the orders of the court. The tenure of office of the drainage commissioners shall thereupon terminate during the pendency of said receivership, and the court shall order all the records of said drainage district to be turned over to said receiver who may take possession thereof.

SOURCES: Codes, 1942, § 4671-03; Laws, 1952, ch. 308, § 3.

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

§ 51-33-81. Audit of records.

It shall be the duty of the receiver to audit the records of said drainage district so as to show (1) each tract of land originally assessed described with reasonable certainty, (2) the name of the person designated as owner on the original benefit assessment roll, (3) the total amount originally assessed against each tract of land, (4) the total amount of assessed benefits actually paid on each tract of land, (5) the total amount of assessed benefits on each tract of land remaining unpaid and due when the audit is made, and (6) the total amount of unpaid assessments of each tract remaining unpaid but not due. In the event the records of said drainage district have been lost or cannot be found upon diligent search and inquiry, said receiver shall make an audit as best he can, showing the six items above enumerated by taking into consideration the last time annual levy was made as reflected by the order of court, board of supervisors, or other governing authority, and the amount of outstanding and unpaid bonds and interest coupons issued by said drainage district as may be satisfactorily proved to him by the holders of any such bonds, whether said bonds are in their original form or have been reduced to judgment. Said audit shall also show whether or not the bonds issued by said drainage district are in excess of the assessed benefits or other limitations fixed by law at the time such bonds were issued and, if excessive, to what extent. Upon such audit being completed, the receiver shall file the same, together with such supplemental report as he may deem proper or the court may require, and said audit shall be deemed prima facie correct. Upon filing such audit and report, the clerk of said court shall cause to be published once each week for three successive weeks in a newspaper published in said county, or if no newspaper is published in said county, then in some newspaper having a general circulation in said county, a notice and summons directed to all landowners of said drainage district, the holders of its bonds, and judgment holders, that such audit and report of the receiver has been filed in said court and receivership cause and is subject to their inspection and objection. Such notice shall state that unless such landowner, bondholders, or judgment holders shall, on or before the next ensuing term of said court to convene not earlier than thirty days after the first publication, appear and show cause in writing and in detail why said audit is incorrect in any particular, then said audit will be approved and made final, and all parties shall be bound thereby. It shall be the duty of the court to hear and adjudicate all objections made and filed by any landowner or any bondholder, giving to each the right to contest the objection of the other. After all objections have been heard and adjudicated, the court shall enter its final decree, which shall describe with reasonable certainty each tract of land assessed, the name of the owner or the one to whom it was originally assessed, the amount of unpaid benefit assessments which are due and chargeable to each tract, the amount of unpaid benefit assessments which are not due, the names of the bond and judgment holders and the amounts held by each which are found to be legal obligations of said drainage district, and which of such bonds or the percentage thereof are entitled to payment out of the remaining unpaid benefit assessments when collected. Said final decree shall also declare and fix as a statutory lien, paramount to all liens save and except liens for state and county taxes, the amount so found to be owing and unpaid, whether due or not, on each tract of land and shall fix a day, not later than four months after the rendition of said final decree, for the payment of all such unpaid benefit assessments as are found to be then due and owing. Said decree shall also provide for a sale by the receiver of any and all tracts of land therein mentioned on which the amount so assessed and fixed as a lien is due and shall remain unpaid on the day fixed for its payment. Publication of notice of such sale shall be made in manner and form and for the time required by law for the sale of land delinquent for general taxes, such sale to take place at the court house of said county within legal hours on the day named in the published notice of sale. The court may from time to time order further sales of any such land for the remaining assessed benefits which shall later mature. From such final decree any interested landowner and bondholder may appeal to the supreme court in the manner provided by law generally for such appeals.

SOURCES: Codes, 1942, § 4671-04; Laws, 1952, ch. 308, § 4.

§ 51-33-83. Payment of assessments by landowners or sale of property.

Any landowner interested shall have the right to pay to the receiver, whether due or not, the amount charged and assessed as a lien on his tract of land at any time before it is sold. In such event the receiver shall issue to him a receipt therefor, which shall discharge such tract of land from the lien and assessment fixed against it and may be recorded by the clerk of said court. In the event of a sale the landowner, the bond and judgment holders, or their agent shall have the right to purchase, and sale shall be made to the highest bidder for cash at public outcry. The receiver shall execute to the purchaser an appropriate conveyance of the tract sold for the amount bid, and such sale shall extinguish all claims and demands of the bond and judgment holders against said land for the benefit assessments for which it is sold, whether for the full amount or not, but shall not affect the lien of the bond and judgment holders for any benefit assessments not due.

SOURCES: Codes, 1942, § 4671-05; Laws, 1952, ch. 308, § 5.

RESEARCH REFERENCES

Am Jur. 7 Am. Jur. Legal Forms 2d, Drains and Drainage Districts §§ 92:51-92:63 (assessments).

§ 51-33-85. Compromise of assessments between landowners and bondholders.

It shall be permissible for the landowner and the bond and judgment holders of such bonds as may be adjudicated a lien on unpaid assessed benefits to agree, in writing signed by them and filed with the receiver, to compromise and settle the amount assessed and fixed as a lien on any particular tract of land for such sum as they may agree on. In such event the receiver shall, upon the landowner paying to him the agreed sum, issue to the landowner a receipt for the amount so agreed in full satisfaction of such lien; and such receipt may be recorded by the chancery clerk when signed and acknowledged by the receiver. The bond and judgment holders of such bonds as may be adjudicated a lien on unpaid assessed benefits may act by a common agency appointed by them for this purpose, which appointment shall be in writing and duly acknowledged and recorded in the land deed records of such county.

SOURCES: Codes, 1942, § 4671-06; Laws, 1952, ch. 308, § 6.

§ 51-33-87. Disposition of funds and discharge of receiver.

All funds received by the receiver, either as payments made by the landowners or by sale of the land as authorized in Section 51-33-83, shall constitute a trust fund in the hands of said receiver for the use and benefit of the bond and judgment holders entitled thereto. The receiver shall make report to court annually and from time to time as the court may order, showing the amount of assessments by him collected. Out of the funds so collected, the court shall order all costs paid. Ten per cent (10%) of the amount collected under said receivership shall, by said receiver, be paid into the state treasury to the credit of the department of audit fund; and the balance remaining shall be paid to the bond and judgment holders entitled thereto in proportion to their respective valid and legal holdings. When all assessed benefits become due and the receiver has collected all that can be collected, either by payment by the landowners or by sale of the land, he shall make final report; and upon paying out all funds in accordance with the orders of the court, the receiver may be finally discharged. Upon the discharge of said receiver, the status quo of the drainage district shall be reestablished by order of the court, or said district may be dissolved as by law permitted.

SOURCES: Codes, 1942, § 4671-07; Laws, 1952, ch. 308, § 7.

§ 51-33-89. Receivership as additional management method.

Sections 51-33-75 through 51-33-89 are not intended as repealing or modifying any statute of this state pertaining to drainage districts, but are intended as an additional and cumulative method of managing and operating drainage districts under special circumstances.

SOURCES: Codes, 1942, § 4671-08; Laws, 1952, ch. 308, § 8.

§ 51-33-91. Dissolution of district without construction—time limitation for commencement of proceedings.

Any drainage district operating under the provisions of any law of the State of Mississippi which has no unmatured bonded indebtedness and has constructed no levees, canals, or other drainage improvements may be dissolved by the chancery court of the county in which said district was organized, or by the chancellor of such court in vacation, in the manner hereinafter provided; but the proceedings for its dissolution shall not be commenced within three years after the date of the organization of such district.

SOURCES: Codes, 1930, § 4507; 1942, § 4733; Laws, 1924, ch. 256; Laws, 1934, ch. 229.

JUDICIAL DECISIONS

1. In general.

A consolidated drainage district which had taken over the canals of its constituent districts would not be subject to dissolution under the provisions of this section. Carter v. Chuquatonchee Consol. Drainage Dist., 218 So. 2d 30 (Miss. 1969).

An insolvent drainage district is not subject to having its affairs administered and wound up by the federal district court under the 1937 amendment to the Bankruptcy Act (11 USCS §§ 401 et seq), providing for the composition of indebtedness of drainage districts, in the absence of consent by the state that the district's affairs may be so administered, which consent has not been granted by any act of the legislature. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 30.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 41, 42 (Dissolution of districts).

CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-33-93. Dissolution of district without construction; petition; notice.

Whenever, after the expiration of the said period of three years, five or more landowners of any such district, or a majority of the landowners of any such district, excluding lands owned by the state, or any landowner or owners owning more than fifty per cent of the total acreage of said district, excluding the acreage owned by the state, shall sign and file with the clerk of the chancery court by which such district was organized, or in the county in which such district was organized, a petition for the dissolution of such drainage district, it shall be the duty of such clerk to give notice thereof by publishing said notice for three consecutive weeks in a newspaper published in said county, or in each of the counties in which lands of the district lie. Said notice shall be addressed to all persons interested in said drainage district and shall command them to appear before the said chancery court at a place named within the said chancery court district on a day certain in term time, or before the chancellor in vacation, not earlier than twenty days nor more than sixty days after the date of the first publication of said notice, and show cause, if any they can, why said drainage district should not be dissolved. Upon the first publication of said notice, all proceedings of every kind of said drainage district and of the commissioners of the said drainage district shall be discontinued until the hearing of said cause as herein provided.

SOURCES: Codes, 1930, § 4508; 1942, § 4734; Laws, 1924, ch. 256; Laws, 1934, ch. 229.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 41, 42 (Dissolution of district).

§ 51-33-95. Dissolution of district without construction; proceedings; chancery court jurisdiction.

The said chancery court, or the chancellor thereof in vacation, shall take jurisdiction of said cause and shall hear the same on the return day thereof in the same manner as other causes in chancery. If upon the hearing of said cause it appear that it is to the best interests of the landowners of said drainage district that said district be dissolved, the said court or chancellor shall thereupon enter an order dissolving the said drainage district, and requiring and decreeing that no further expenses or indebtedness be incurred or contracted by the commissioners of said drainage district. Said commissioners of said drainage district shall immediately and within ten days thereafter deposit with the clerk of the said court in which said proceedings are pending all papers, records, and documents of the said drainage district.

If it shall appear that it is not to the best interests of the landowners of the said district that the same be dissolved, the chancellor or chancery court shall so decree.

If it appear to the chancery court or chancellor that it is to the best interests of the said drainage district that same be dissolved and the decree is entered accordingly, the costs of the proceeding, including solicitors fees as might be allowed by the court, shall be assessed and taxed by the court to be collected on an acreage basis on the lands within said drainage district; and thereafter the said district shall be dissolved and shall have no further powers or authorities under the law whatsoever. In the event that the said district shall not be dissolved, such costs, attorneys fees, and expenses as may be involved shall be assessed against the petitioners; and the drainage district shall be absolved from any liability on account thereof.

SOURCES: Codes, 1930, § 4509; 1942, § 4735; Laws, 1924, ch. 256; Laws, 1934, ch. 229.

§ 51-33-97. Dissolution of district without construction; claims.

Nothing contained in Sections 51-33-91 through 51-33-97 shall be construed to impair or affect any contract or other obligation of any such drainage district, but persons holding claims against such drainage district shall, on notice of the dissolution thereof as provided herein, file any such claims as they may have against such district. If the court should decree that said district should be liquidated, all of said claims shall be passed upon by the chancery court or chancellor, as the case may be, and if found just, a levy shall be made upon said lands upon an acreage basis as hereinabove provided, in order to liquidate and pay such indebtedness as may be found due and owing by said district.

SOURCES: Codes, 1930, § 4510; 1942, § 4736; Laws, 1924, ch. 256; Laws, 1934, ch. 229.

§ 51-33-99. Dissolution of district with construction not requiring maintenance.

Any drainage district heretofore organized which has constructed drainage canals and which has no outstanding indebtedness, bonded or otherwise, and wherein there is no necessity of maintenance work from year to year may be dissolved by the chancery court in which the drainage district was organized, or by the chancellor in vacation, in the manner hereinafter provided.

SOURCES: Codes, 1942, § 4661; Laws, 1934, ch. 230.

Cross References — Receivership for certain districts, see § 51-33-75 et seq.

JUDICIAL DECISIONS

1. In general.

An insolvent drainage district is not subject to having its affairs administered and wound up by the federal district court under the 1937 amendment to the Bankruptcy Act providing for the composition of indebtedness of drainage districts, in the absence of consent by the state that the district's affairs may be so administered, which consent has not been granted by any act of the legislature. Evans v. Bankston, 196 Miss. 533, 18 So. 2d 301 (1944).

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 30.

CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-33-101. Dissolution of district with construction not requiring maintenance; petition; notice.

Whenever a majority of the landowners owning a majority of the land in such drainage district shall sign and file with the clerk of the chancery court in which such drainage district was organized a petition for the dissolution of such drainage district, it shall be the duty of the chancery clerk to give notice thereof by publication. Such notice shall be published for three weeks in a newspaper published in the county in which the drainage district was organized, shall be addressed to all persons interested in said drainage district, and shall command them to appear before the said chancery court on a day certain in term time, or before the chancellor in vacation at a place and time to be stated in said notice, not later than five days nor more than sixty days after the date of the last publication of said notice and show cause, if any they can, why said drainage district should not be dissolved.

SOURCES: Codes, 1942, § 4661; Laws, 1934, ch. 230.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 30.

9 Am. Jur. Pl & Pr Forms (Rev), Drains and Drainage Districts, Forms 41, 42 (Dissolution of district).

CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-33-103. Dissolution of district with construction not requiring maintenance; proceedings; chancery court jurisdiction.

The said chancery court, or the chancellor thereof in vacation, shall take jurisdiction of said cause and shall hear the same on the return day thereof in the same manner as other causes in chancery. If, upon the hearing of said cause, it shall appear that it is to the best interest of the landowners of said drainage district that said district be dissolved and that there is no outstanding indebtedness, bonded or otherwise, the court or chancellor shall thereupon enter an order dissolving the said district, requiring that no further expense or indebtedness be incurred or contracted by the commissioners of said drainage district, and that said drainage commissioners shall, within thirty days thereafter, deposit with the clerk of said court all papers and records of said district. If it shall not appear to be to the best interest of the landowners or if there is outstanding indebtedness against said drainage district and necessity for maintenance work from year to year in said district, the petition shall be dismissed at the cost of petitioners and no further petition for the dissolution of said district shall be filed within two years thereafter.

SOURCES: Codes, 1942, § 4661; Laws, 1934, ch. 230.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 30.
CJS. 28 C.J.S., Drains §§ 10, 11.

§ 51-33-105. Dissolution of district by cumulative method.

Whenever twenty-five per cent (25%) of the landowners owning a majority of the acreage of any drainage district organized under any of the laws of the State of Mississippi desire to have the same dissolved and its affairs wound up, the chancery court in which said district was organized, or the chancery court of the county in which the lands of said district are located, or the chancellor of either of said courts in vacation shall be authorized to enter an order or decree directing that the affairs of the same be wound up and that said districts be dissolved on such terms as the court or chancellor in vacation might deem meet and proper, (a) whenever it shall be made to appear to the court or chancellor in vacation in any proceeding filed for said purpose that said drainage district does not have any outstanding indebtedness, bonded or otherwise, or (b) in the event it does have an outstanding indebtedness, bonded or otherwise, but owns easements, rights of way, drains, canals, ditches, or other property which said district can sell for an amount equal to its fair cash market value which will be sufficient, or when added to any other funds of the district will be sufficient, to enable it to pay off and discharge all of its outstanding indebtedness, bonded or otherwise.

SOURCES: Codes, 1942, § 4662; Laws, 1938, ch. 258.

§ 51-33-107. Dissolution of district by cumulative method; petition.

All proceedings instituted under Section 51-33-105 shall be by petition addressed to the court having jurisdiction of said proceedings, as aforesaid, and, when executed as hereinafter directed, filed with the clerk of said court. Said petition shall be signed by twenty-five per cent (25%) of the landowners owning a majority of the acreage in any of said drainage districts. Any guardian of the estate of any person under legal disability owning lands in said district is hereby authorized to sign said petition for said person or persons under disability and, likewise, the executors, administrators, or trustees of any decedent's estate are authorized to sign said petition for said decedent. Any officer of any corporation may sign the same for said corporation.

SOURCES: Codes, 1942, § 4663; Laws, 1938, ch. 258.

§ 51-33-109. Dissolution of district by cumulative method; notice and summons.

After said petition has been filed with the clerk and if the same pray for a hearing in vacation, the clerk shall thereupon refer the same to the chancellor of said court with the request that he set the matter and fix the time, date, and place for the hearing thereof by him in vacation, and it shall be the duty of the chancellor to fix and set a time, date, and place for the hearing by him of said petition in vacation. When done, the clerk of said court shall cause a notice to be published which shall be addressed to all persons interested in the affairs of said drainage district and shall command them to appear at the time, date, and place set for the hearing of said petition to show cause, if any they can, why the prayer of said petition should not be granted. Said notice shall further command them to be present and file in said proceeding, on or before the time and date set for the hearing of said petition, any and all claims which they might have against said district, and that any and all claims not so presented and filed shall be forever barred, except the claims of holders of bonds or certificates of indebtedness legally issued by said district and the interest thereon. Said notice shall be published in a newspaper published in each of the counties in which the lands of the district lie for once in each week for three successive weeks, and said publication shall be deemed completed and said matters shall be deemed ready for hearing on their merits on the day fixed therefor in said order and the notice so published, provided not less than twenty-one days have intervened from the date of the first publication of said notice and the date fixed in said order and given in said notice published for said hearing.

After the time, date, and place has been set for the hearing of said petition as above provided, the clerk of said court shall issue a summons for each of the constituted authorities of said district, commanding them to appear before the court or chancellor in vacation at the time, date, and place so set for the hearing of said petition and to file in said proceeding, on or before the time and date set for the hearing thereof, a written statement under oath, showing in detail the full amount of bonds or certificates of indebtedness issued by said district, the amount paid, the amount outstanding, the amount of interest due thereon at the date of said hearing, as well as the amount of any other indebtedness of said district that is outstanding at the time.

If the petition as filed does not ask for said matters to be heard by the chancellor in vacation, the clerk shall cause notice to be given that all of the aforesaid matters will be heard on the first day of the next regular term of the said court to be convened after the filing of said petition, which said notice shall be published in the manner and for the length of time as hereinbefore specified.

The chancellor is hereby authorized to hear any and all of said matters in vacation at any place in his district that he might see fit so to do. On the hearing thereof he shall determine and adjudicate as to the sufficiency of said petition, shall determine and adjudicate from the evidence introduced in support thereof whether petitioners are entitled to relief prayed for, and shall likewise determine and adjudicate the amount of all outstanding indebtedness of said district, bonded or otherwise.

SOURCES: Codes, 1942, § 4664; Laws, 1938, ch. 258.

§ 51-33-111. Dissolution of district by cumulative method; claims.

At the time, date, and place set for the hearing of said petition as above provided, the court or chancellor in vacation shall at said time, date, and place also take up, examine, determine, and allow all claims of indebtedness of said district, bonded or otherwise. Any claims of indebtedness against any of said drainage districts which are not filed and presented with the clerk of the court in which said proceeding is pending on or before the time and date fixed therefor by the decree of the court or chancellor in vacation and in the notice so published shall be forever barred, except the claims of holders of bonds or of certificates of indebtedness legally issued by said district, and the interest thereon.

SOURCES: Codes, 1942, § 4665; Laws, 1938, ch. 258.

§ 51-33-113. Dissolution of district by cumulative method; sale of property; orders and decrees; appointment of masters.

In the event the petition as filed shows and the court or chancellor in vacation finds that said district has not paid off all of its outstanding indebtedness, bonded or otherwise, but owns easements, rights of way, canals, ditches, drains, or other property which can be sold for an amount equal to its fair cash market value which will enable said district to pay off and discharge its outstanding indebtedness, bonded or otherwise, the court or chancellor in vacation is in such event authorized, considering the best interests of the landowners and of said district, to enter an interlocutory order dissolving said district and directing its affairs to be wound up, which order shall be made final, either by the court in term time or by the chancellor in vacation, upon the property of said district being sold and all of its outstanding indebtedness, bonded or otherwise, being fully paid and discharged. To this end the court or chancellor in vacation is hereby authorized and empowered to make and enter all interlocutory decrees or orders that it might deem advisable and necessary to make; to divest the title out of said district in and to any and all easements, rights of way, canals, ditches, drains, or other property owned by said district and vest the same in a special commissioner to be appointed by the court or chancellor in vacation to sell the same on such terms and at such an amount as the court or chancellor in vacation finds to be for the best interest of the landowners and said district; and to direct said commissioner to convey any or all of said property to the purchaser at the price and on the terms authorized, to collect the same, and to pay therefrom any and all of the outstanding indebtedness, bonded or otherwise, as directed by the court or chancellor in vacation. The court or chancellor in vacation is hereby authorized to appoint masters or commissioners of the court to wind up the affairs of said district under its direction, and to make any and all interlocutory orders that might be necessary to be made for the purpose of dissolving said district and directing its affairs to be wound up.

SOURCES: Codes, 1942, § 4666; Laws, 1938, ch. 258.

§ 51-33-115. Dissolution of district by cumulative method; claims; fees and commissions; contraction of debts.

The court or chancellor in vacation is hereby authorized at the time, date, and place of the first hearing of all of the aforesaid matters, as well as at any other time he might order, to allow and determine all claims of indebtedness of said district, bonded or otherwise, and to provide for the payment of all of such indebtedness, including all bonded indebtedness which at that time remains unpaid. The court or chancellor in vacation is hereby authorized to allow reasonable fees and commissions to commissioners or liquidators, covering service rendered by them, who might be appointed by him to wind up the affairs of any of said drainage districts; to allow reasonable attorney's fees to the attorney or attorneys for any services rendered by him or them in bringing about the dissolution of said district and having its affairs wound up; and to provide for the payment of all of said fees and commissions. After said petition has been filed as herein authorized, no further debts shall be contracted or incurred by said district except such as may be allowed by the court.

SOURCES: Codes, 1942, § 4667; Laws, 1938, ch. 258.

Cross References — Urban flood and drainage control generally, see § 51-35-301 et seq.

Authority of highway commission to contract with United States in flood control projects, see § 65-1-29.

RESEARCH REFERENCES

ALR. Liability of municipality or other governmental subdivision in connection with flood-protection measures. 5 A.L.R.2d 57.

§ 51-33-117. Dissolution of district by cumulative method; surplus funds; effect of dissolution.

If it shall be made to appear to the court or chancellor in vacation on the hearing of any proceedings filed under Sections 51-33-105 through 51-33-121 that the district will have funds on hand after all of its debts and all expenses and court costs incident to said proceeding have been paid, then and in this event, the court or chancellor in vacation shall provide, order, and direct in the final decree dissolving said district that the said surplus shall be refunded among the landowners of said district on such pro rata, equitable, and just basis and terms as the court or chancellor shall find to be proper. After the final decree has been rendered by the court or chancellor in vacation in any proceeding instituted under said sections dissolving any drainage district, said district shall have no further existence and no further drainage taxes shall be levied against any of the lands embraced within the limits of said district. All of the unpaid benefits and assessments assessed against the lands in said drainage district for drainage purposes shall stand canceled, the lien therefor shall be unenforceable, and the court or chancellor in vacation shall so provide in the final decree rendered dissolving said drainage district.

SOURCES: Codes, 1942, § 4668; Laws, 1938, ch. 258.

§ 51-33-119. Dissolution of district by cumulative method; appeals.

The hearing and trial of any proceeding instituted under the terms of Sections 51-33-105 through 51-33-121 shall be conducted as other hearings and trials are conducted in the chancery court or by the chancellor in vacation, except as hereinabove provided. Any person feeling aggrieved by a final decree rendered by the court or chancellor in vacation in any of said proceedings shall have a right to appeal therefrom to the supreme court of Mississippi, which appeal shall be taken within twenty days from the date of said final decree.

SOURCES: Codes, 1942, § 4669; Laws, 1938, ch. 258.

§ 51-33-121. Law as additional method of dissolution.

Sections 51-33-105 through 51-33-121 shall be cumulative and additional and supplementary to any and all other laws of the State of Mississippi which provide for the dissolution of drainage districts and for the affairs of said districts to be wound up. In the event a petition filed under said sections is dismissed, the same shall be dismissed without prejudice and another may be filed again thereafter whenever the petitioners are able to bring themselves within the terms of said sections.

SOURCES: Codes, 1942, § 4670; Laws, 1938, ch. 258.

§ 51-33-123. Saving statute.

Drainage districts heretofore organized under the provisions of any law and amendments thereto not brought forward in this code shall have the privilege of continuing to operate under such law, and the adoption of this code shall not be held to repeal any such law or laws and amendments thereto, in so far as such districts are concerned. However, all drainage districts hereafter created must be organized and shall operate under the provisions of Chapters 29, 31 and 33 of Title 51, Mississippi Code of 1972.

SOURCES: Codes, 1930, § 4527; 1942, § 4756.

§ 51-33-125. Transfer of powers, duties and responsibilities of dissolved drainage districts with federally funded water impoundment structures to county soil and water conservation districts.

The duties, powers and responsibilities of a drainage district with water impoundment structures constructed with financing from the United States under Public Law 534 or Public Law 566, 83rd Congress of the United States, or both, may be transferred to the county soil and water conservation district if it becomes apparent that such drainage district should be dissolved, but future oversight, maintenance and operation are required for the existing structures.

SOURCES: Laws, 2001, ch. 474, § 1, eff from and after July 1, 2001.

Federal Aspects — Public Law 83-534 was codified generally at 20 USCS §§ 333 through 337. Sections 333 through 337 were repealed by Act April 13, 1970, Pub. L. 91-230, Title I, Part D, § 143 (b), 84 Stat 151.

Public Law 83-566 is codified generally at 16 USCS § 1001 et seq.

§ 51-33-127. Procedures for transfer of drainage district attributes to county soil and water conservation district; dissolution of drainage district; continuation of maintenance and operation of existing structures.

(1) A drainage district may be dissolved and its powers, duties and responsibilities transferred to the county soil and water conservation district by:

(a) The commissioners of the drainage district determining and spreading on the district's minutes that it is in the best interest of the residents and landowners of the drainage district that the district be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. In any drainage district in which there are not any active drainage district commissioners, or in which the drainage district has ceased to function, the county soil and water conservation district commissioners and the county board of supervisors may begin the dissolution and transfer. If the dissolution of the drainage district and transfer of powers occurs without a resolution from the drainage district commissioners, the chancery court, in its proceedings under subsection (1)(e), must determine and state that there is not an active drainage district or there are not any drainage district commissioners, or both.

(b) The commissioners of the county soil and water conservation district determining, and spreading on the district's minutes, that it is in the best interest of the residents and landowners of the drainage district that the drainage district be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. Then, the county soil and water conservation district must decide if it is willing to accept those powers, duties and responsibilities.

(c) The county board of supervisors agreeing, and spreading on the county's minutes, that the drainage district should be dissolved and its powers, duties and responsibilities be transferred to the county soil and water conservation district. If the county supervisors agree to transfer the drainage district to the county soil and water conservation district, they must register their support by one (1) of the following methods of funding the operation and maintenance of the existing water impoundment structures:

(i) Continuation of existing ad valorem tax assessments on benefited or affected acres with the ad valorem taxes being used by the county soil and water conservation district solely for the operation and maintenance of existing water impoundment structures transferred from the drainage district.

(ii) If there has not been an ad valorem tax assessment or if the assessment has expired, the establishment of ad valorem tax assessments on benefited or affected acres and collection of the ad valorem taxes solely for the operation and maintenance of the existing water impoundment structures transferred from the drainage district. The ad valorem assessment and collection of taxes shall comply with the procedures authorized in Sections 51-29-45 through 51-29-57.

(iii) If there has not been an ad valorem tax assessment or if it has expired, the county board of supervisors may agree to provide funds, through county appropriation, to the county soil and water conservation district for the operation and maintenance of the transferred water impoundment structures.

(d) Upon completion of the requirements of subsection (1)(a) through (c), the commissioners of the drainage district or the commissioners of the county soil and water conservation district, or both, shall petition the chancery court of the county in which the drainage district was originally established for the dissolution of the drainage district and the transference of its powers, duties and responsibilities to the soil and water conservation district. The petition must be accompanied by copies of the minutes reflecting the actions of the drainage district, the soil and water conservation district and the county board of supervisors. After the petition is filed, it shall be the duty of the clerk of the court to give notice of the filing by publishing the notice in a newspaper published in the county for three (3) consecutive weeks or by publishing the notice in a newspaper published in the counties in which the lands of the drainage district lie. The notice shall be addressed to all persons interested in the drainage district and shall require them to appear before the chancery court at a place within the district of the chancery court on a day certain but not earlier than twenty (20) days or more than sixty (60) days after the date of the first publication of the notice, and show cause, if any, of why the petition should not be granted.

(e) On the date set by the court, the chancellor shall review the petition, minutes of the respective districts and board of supervisors, and any other evidence or testimony the court finds necessary, and if the court determines:

(i) Subsection (1)(a) through (c) of this section has been complied with; and

(ii) It is in the best interest of the landowners and residents of the drainage district to dissolve the drainage district and transfer the drainage district's powers, duties and responsibilities to the county soil and water conservation district, the court shall enter its order:

1. Dissolving the drainage district.

2. Transferring all the powers, duties and responsibilities of the drainage district to the county soil and water conservation district.

3. Provide funding for the future operation and maintenance of the existing water impoundment structures by either:

a. Transferring existing authority to assess benefited or affected acres for ad valorem taxation;

b. Authorizing the county soil and water conservation district to assess ad valorem taxes on benefited or affected acres in the manner authorized for drainage districts in Sections 51-29-45 through 51-29-57; or

c. Recognizing that the county board of supervisors will determine and provide funding amounts for the operation and maintenance of the water impoundment structures by the county soil and water conservation district.

4. Transferring all assets of the drainage district, real or personal, or both, and any other assets, wherever they are situated, to the county soil and water conservation district.

(2) If a drainage district's boundaries cross county lines:

(a) Subsection (1)(b) and (c) must be completed by the county soil and water conservation district and the county board of supervisors for each county in which the drainage district has existing water impoundment structures constructed with financing from the United States under Public Law 534 or Public Law 566, 83rd Congress of the United States; and

(b) The chancery court's division of powers, duties and responsibilities, together with the funding responsibilities for operation and maintenance of existing structures, shall be in accordance with the agreement of all county soil and water conservation districts and county board of supervisors within whose boundaries the drainage district's structures lie.

SOURCES: Laws, 2001, ch. 474, § 2, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the paragraph (d) of subsection (1). The word "ad dressed" was changed to "addressed" in the last sentence. The Joint Committee ratified the correction at its July 8, 2004, meeting.

Federal Aspects — Public Law 83-534 was codified generally at 20 USCS §§ 333 through 337. Sections 333 through 337 were repealed by Act April 13, 1970, Pub. L. 91-230, Title I, Part D, § 143(b), 84 Stat. 151.

Public Law 83-566 is codified generally at 16 USCS § 1001 et seq.

ARTICLE 3.

PROVISIONS COMMON TO SWAMP LAND DISTRICTS.

SEC.
51-33-201. Appointment of commissioners; bond.
51-33-203. Duties and powers of commissioners.
51-33-205. Tax levy.
51-33-207. General authority of commissioners.

§ 51-33-201. Appointment of commissioners; bond.

Swampland districts heretofore organized under the provisions of Sections 371 through 391, inclusive, of the Code of 1906 and amendments thereto shall continue to operate under the provisions of said laws, and the adoption of this Code of 1972 shall not be held to repeal such laws insofar as any of such districts are concerned. However, no districts shall hereafter be organized under said laws.

In all cases where there are no commissioners of such a swampland district now in office, the board of supervisors of the county in which a swampland district is located shall have the power and authority to appoint three (3) commissioners for such swampland district, whose term of office shall be for a period of four (4) years from the date of such appointment. In the event a vacancy in the office of any such commissioner shall result from death, resignation or any other cause, such vacancy shall be filled by the board of supervisors by appointment for the unexpired term; and upon the expiration of the term of office of any commissioner appointed hereunder, the board of supervisors shall appoint his successor for a like term of four (4) years. All commissioners appointed under the provisions of this article shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty not less than Fifty Thousand Dollars ($50,000.00).

SOURCES: Codes, 1930, § 4528; 1942, § 4757; Laws, 1950, ch. 469, § 1; Laws, 1986, ch. 458, § 41; Laws, 2009, ch. 467, § 19, eff from and after July 1, 2009.

Editor's Note — Section 48, Chapter 458, Laws of 1986, provided that § 51-33-201 would stand repealed from and after October 1, 1989. Subsequently, three 1989 chapters (341, 342, and 343) amended Section 48, Chapter 458, Laws of 1986, by deleting the date for repeal.

§ 51-33-203. Duties and powers of commissioners.

The commissioners provided for herein shall have control and management of all of the affairs of such swamp land district, shall have the power and authority to make improvements to and to maintain the existing drainage channel or channels of such district, and shall have the power to contract and cooperate with any appropriate agency of the United States government in so improving or maintaining any such channel or channels.

The commissioner shall have the further power and authority to expend the funds of such district for such purposes and all other proper and necessary purposes.

SOURCES: Codes, 1942, § 4757-01; Laws, 1950, ch. 469, § 2.

§ 51-33-205. Tax levy.

When so recommended by such commissioners, the board of supervisors of the county wherein such swamp land district is located shall have the power and authority to levy an annual tax upon all the lands included in such district, which said tax shall not exceed twenty cents (20¢) per acre in any one year. All of the provisions of said Sections 371 to 391, inclusive, Mississippi Code of 1906, as amended, shall control the manner and method of the levying, collection, and distribution of such tax; and the proceeds thereof may be expended for the purposes herein authorized.

SOURCES: Codes, 1942, § 4757-02; Laws, 1950, ch. 469, § 3.

§ 51-33-207. General authority of commissioners.

The said commissioners shall have full power and authority to do and perform all acts and things necessary and desirable in carrying out the purposes of this article and shall have all powers set forth in said Sections 371 to 391, Code of 1906.

SOURCES: Codes, 1942, § 4757-03; Laws, 1950, ch. 469, § 4.

CHAPTER 35

Flood Control

Article 1. Flood Control Agreements with United States 51-35-1

Article 3. Flood Control Districts. [Repealed]

Article 5. Urban Flood Control 51-35-301

Article 1.

Flood Control Agreements with United States.

Sec.

51-35-1. Drainage district agreements to maintain works.

51-35-3. Relocation of roads outside drainage district.

51-35-5. Donations of land to drainage district.

51-35-7. Drainage district tax for maintenance.

51-35-9. Drainage district agreements to furnish rights of way.

51-35-11. Acquisition of rights of way by drainage districts.

51-35-13. Drainage district tax for rights of way.

51-35-15. County agreements for rights of way and maintenance.

51-35-17. Agreement by certain county.

51-35-19. Alteration, relocation, or abandonment of county roadways.

51-35-21. Contribution to cost of acquiring land for improvements outside county.

51-35-23. Apportionment of federal funds.

51-35-25. Authorization for annual fee to be imposed on landowners selling reforestation easements; limitation on amount of fee; proceeds to be used to provide road maintenance; fire and police protection; and other services.

§ 51-35-1. Drainage district agreements to maintain works.

The commissioners of any drainage district heretofore or hereafter organized under the laws of the State of Mississippi, acting on behalf of the district or in cooperation with other drainage districts, are hereby authorized and empowered to give satisfactory assurances to the United States of America or any agency thereof that any and all flood control works, constructed either within or without the district by the United States of America or any agency thereof, shall be maintained without expense to the United States. The commissioners of any drainage district are hereby authorized and empowered on behalf of the district to enter into agreements with the commissioners of other drainage districts for carrying out the purposes of Sections 51-35-1 through 51-35-7.

SOURCES: Codes, 1942, § 4763; Laws, 1936, ch. 325.

Federal Aspects — 33 USCS §§ 567a, 701d.

§ 51-35-3. Relocation of roads outside drainage district.

The commissioners of any drainage district agreeing as herein provided to maintain flood control works constructed by the United States of America or any agency thereof are hereby authorized and empowered to appropriate money and to pay the same to the proper state, county, or district authority as reimbursement for the cost of locating, relocating, building, or rebuilding of any roads and highways outside the limits of the district, when the same shall be rendered necessary by the construction of flood control works, and to give satisfactory assurances to the United States of America or any agency thereof that the location, relocation, building, or rebuilding of such roads and highways shall be done without expense to the United States of America.

SOURCES: Codes, 1942, § 4764; Laws, 1936, ch. 325.

Cross References — Crossing of highways and railroads by drainage ditches, see § 51-29-95.

How drain may cross public road, see § 51-31-95.

§ 51-35-5. Donations of land to drainage district.

The commissioners of any drainage district entering into agreement with the United States of America or any agency thereof, as hereinbefore provided, are hereby authorized and empowered to accept for the district the conveyance of any lands, within or without the district, and to use, rent, lease, and convey the same for the benefit of the district in the maintenance of flood control works and improvements. Such lands when vested in the district shall be subject to taxation as are other lands, and said commissioners are hereby authorized and empowered to pay such taxes out of any available funds other than sinking funds being accumulated for the retirement of district bonds and payment of interest thereon; and such drainage districts are hereby authorized and empowered to pay such taxes out of any available fund.

SOURCES: Codes, 1942, § 4765; Laws, 1936, ch. 325; Laws, 1938, ch. 259.

§ 51-35-7. Drainage district tax for maintenance.

The commissioners of any drainage districts entering into such agreements as are herein provided are authorized and empowered to fix and levy an annual ad valorem tax of not exceeding two mills on the dollar upon all of the real and personal property in the district, for the purpose of defraying the costs of maintenance of flood control works and the costs of location, relocation, building, and rebuilding of roads and highways without the limits of the district. Such levy shall be certified by the commissioners to the board of supervisors of the proper county before the time fixed by law for the levying of county taxes; and the board of supervisors shall, at the time fixed for the levying of county taxes, levy such tax and certify said levy to the tax collector, who shall collect such taxes as other taxes of the county are collected.

SOURCES: Codes, 1942, § 4766; Laws, 1936, ch. 325.

Cross References — Tax levy by drainage commissioners to meet assessment, see § 51-31-63.

RESEARCH REFERENCES

Am Jur. 50 Am. Jur. 2d, Levees and Flood Control § 4.

§ 51-35-9. Drainage district agreements to furnish rights of way.

The commissioners of any drainage district heretofore or hereafter organized under the laws of the State of Mississippi, acting on behalf of the district or in cooperation with other drainage districts, are hereby authorized and empowered to give satisfactory assurances to the chief of engineers of the United States Army, to the Mississippi River Commission, to the United States district engineer, or to any other agency of the United States government that they will furnish rights of way for all levees and drainage ditches within or without the district for any and all flood control works, including levees and ditches constructed by the United States of America or any agency thereof, within or without the district. The commissioners of any drainage district are hereby authorized and empowered on behalf of the district to enter into agreements with the commissioners of any other drainage districts for carrying out the purposes of Sections 51-35-9 through 51-35-13.

SOURCES: Codes, 1942, § 4766-01; Laws, 1946, ch. 181, § 1.

§ 51-35-11. Acquisition of rights of way by drainage districts.

The commissioners of any drainage district agreeing as herein provided to furnish rights of way for levees and drainage ditches for flood control work constructed by the United States of America, or any agency thereof, are hereby authorized and empowered to acquire or condemn rights of way for levees and drainage ditches inside and outside of the district in the same manner as the commissioners are now authorized to acquire or condemn rights of way and easements for the construction of other drainage works within the district.

SOURCES: Codes, 1942, § 4766-02; Laws, 1946, ch. 181, § 2.

Cross References — Rights, duties, and powers of drainage commissioners, see § 51-29-19.

Procuring right of way, see § 51-31-55 et seq.

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 65.

§ 51-35-13. Drainage district tax for rights of way.

The commissioners of any drainage district entering into such agreements as are herein provided are hereby authorized and empowered to fix and levy an annual ad valorem tax of not exceeding two mills on the dollar upon all of the real and personal property in the district, for the purpose of defraying the expenses of acquiring or condemning and furnishing rights of way for levees and drainage ditches within or without the limits of the district. Such levy shall be certified by the commissioners to the board of supervisors of the proper county before the time fixed by law for the levying of county taxes; and the board of supervisors shall, at the time fixed by law for the levying of county taxes, levy such tax and certify said levy to the tax collector, who shall collect such taxes as other taxes of the county are collected.

SOURCES: Codes, 1942, § 4766-03; Laws, 1946, ch. 181, § 3.

Cross References — Levy and apportionment of tax to meet drainage district assessment, see § 51-31-63.

§ 51-35-15. County agreements for rights of way and maintenance.

The board of supervisors of any county through any part of which any river or other stream may run, or any part of which any river or other stream may touch or border, on which the United States of America has authorized flood control improvements, including channel clearing, channel improvement, cut-offs, levees, dams, or other flood control improvements, is hereby authorized and empowered, for that part of such river or stream running through any part of said county or bordering or touching said county, as aforesaid, to give satisfactory assurances to the United States of America or any agency thereof including the Secretary of War, that it will:

(a) Provide, without cost to the United States, all lands, easements, and rights of way necessary for the construction of the project;

(b) Hold and save the United States free from damages due to the construction of the works; and

(c) Maintain and operate all of the works after completion in accordance with regulations prescribed by the Secretary of War, under the terms of the Flood Control Act of June 22, 1936, or any other similar Flood Control Act of the United States.

Any such board of supervisors is also hereby authorized and empowered to accept the conveyance of any lands, easements, and rights of way over and on behalf of any lands that may be benefited by the maintenance of such works; to accept assurances from landowners whose property is benefited by such flood control improvements, to levy, assess, and collect such taxes on said area so benefited as will be necessary; to save and hold the United States free from all damages due to the construction of the works; to exercise the right of eminent domain for the condemnation of rights of way and easements in like manner as is exercised by boards of supervisors for the condemnation of public road rights of way; to maintain such works in said county after completion, and generally to accept agreements for landowners benefited by such flood works to save the county harmless on account of said assurances given by the county as aforesaid to the United States of America or any agency thereof, including the Secretary of War.

This section shall apply to any county lying wholly within a levee district, or to that part of a county lying within a levee district.

This section shall not apply to any county in which a reservoir project, as a part of a United States government flood control program, shall have been begun prior to the first day of January, 1938.

SOURCES: Codes, 1942, § 4767; Laws, 1938, ch. 314.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first paragraph. A colon was added following the words "that it will." The Joint Committee ratified the correction at its December 3, 1996, meeting.

Cross References — Flood control projects in Pearl River Basin Development district, see § 51-11-52.

Tax for maintenance of flood control works, see § 51-35-7.

ATTORNEY GENERAL OPINIONS

Before exercising any of the powers enumerated in § 51-35-15, a board of supervisors must find that the elements of the statute have been satisfied: a flood control project comprised of one or more of the listed tasks; that has been authorized by the federal government; and, that involves a stream or river running through, bordering on, or touching upon the county. Webb, Sept. 4, 2002, A.G. Op. #02-0472.

RESEARCH REFERENCES

ALR. Liability of municipality or other governmental subdivision in connection with flood-protection measures. 5 A.L.R.2d 57.

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 65.

§ 51-35-17. Agreement by certain county.

(1) The board of supervisors of any county in which is located a national park, a national cemetery, and which is located on the Mississippi River and through any part of which any river or other stream may run, or any part of which any river or other stream may touch or border, on which the United States of America has authorized or may hereafter authorize navigation or flood control improvements is hereby authorized and empowered to give satisfactory assurances to the United States of America, or any agency thereof, that it will:

(a) Provide, without cost to the United States, all lands, easements, and rights of way necessary for the construction of the project;

(b) Hold and save the United States free from damages due to the construction works;

(c) Maintain and operate all of the works after completion in accordance with regulations prescribed by the Secretary of the Army; and

(d) Acquire such added area as may be necessary for the public benefit and use in accordance with the requirements of the United States, or any agency thereof, in connection with any such project.

Any such board of supervisors is also hereby authorized and empowered to accept the conveyance of any lands, easements, and rights of way over and on behalf of any lands that may be benefited by the maintenance of such works; to accept assurances from landowners whose property is benefited by such flood control improvements; to levy, assess, and collect such taxes on said area so benefited as will be necessary; to save and hold the United States free from all damages due to the construction of the works; to exercise the right of eminent domain for the condemnation of rights of way and easements in like manner as is exercised by board of supervisors for the condemnation of public road rights of way; to maintain such works in said county after completion; and generally to accept agreements for landowners benefited by such flood works to save the county harmless on account of said assurances given by the county as aforesaid to the United States of America, or any agency thereof. Any such board of supervisors may exercise all of the powers granted by virtue of Section 59-7-203, Mississippi Code of 1972, in connection with the fulfillment of any of the aforementioned assurances.

(2) In addition to levying, assessing, and collecting such taxes on the area directly so benefited, the board of supervisors of such county may, if deemed necessary to fairly bear or supplement the cost of the providing of all necessary lands, easements, and rights of way for the construction of the project and maintaining and operating the works after completion, levy a countywide tax for such purposes; but such countywide tax shall not be levied, assessed, or collected until after such board of supervisors shall have published notice for three weeks to the taxpayers of said county of its intention so to do, of the maximum rate of said tax, and of the year or numbers of years, not exceeding five years, in which it is then intended to levy and assess such tax, including the maximum rate proposed for each projected year, in some newspaper published in said county and having a general circulation therein. Unless 20% of the qualified electors of said county shall protest against such assessments at a time to be fixed by the board, at least 10 days and not more than 20 days from the date of the last publication, then the authority of such board to levy, assess, and collect such taxes shall exist, but not to exceed the maximum millage rate specified according to the advertisement. Should 20% of the qualified electors protest against such levies, taxes, or assessments, then a special election shall be called for the purpose of presenting such issue to the qualified voters of such county, and the right to make such county-wide levies and assessments and to collect said taxes shall not exist unless authorized at such special election by a majority of the qualified electors actually voting in such election.

(3) Should the voters of such county protest against and, at the special election, disapprove such countywide assessments, then the issue of such countywide assessments and levies shall not be reconsidered by the board of supervisors of such county and again presented until the lapse of at least one

year from the date that such countywide tax was disapproved at the special election called for that purpose. Upon the expiration of each period specified in the notice of intention to levy and collect such countywide taxes for the purposes herein authorized, the board of supervisors of any such county may continue to levy and collect such taxes upon first again following the procedure in this section outlined.

(4) This section shall not serve to repeal Section 51-35-15, but is in amplification and extension of the authority and powers therein granted.

SOURCES: Codes, 1942, § 4767.3; Laws, 1948, ch. 358, §§ 1-4; Laws, 1968, ch. 300, § 1, eff from and after passage (approved July 11, 1968).

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Eminent Domain § 65.

50 Am. Jur. 2d, Levees and Flood Control §§ 1, 2.

§ 51-35-19. Alteration, relocation, or abandonment of county roadways.

(1) The authority granted to boards of supervisors under Section 170 of the Constitution of the State of Mississippi shall be construed to include the right to enter into agreements with the United States for the alteration, relocation, reconstruction, or abandonment of county roadways and the conveyance of easements for term of years, perpetual easements, or fee simple title to the portions of county roadways affected by the construction of flood control projects approved and adopted by the United States or any agency thereof.

(2) Such agreements shall be based upon a consideration deemed reasonable by the board of supervisors and the government.

(3) Any such alteration, relocation, or abandonment of county roadways shall be made pursuant to the authority and procedure of law now in force and effect.

(4) The conveyance of the necessary interest in any such county road right of way shall be for and on behalf of the county and executed by the then acting president of the board, attested by the clerk, and under proper resolution. Such conveyance may include a clause releasing the United States from any further claim as to the county on account of the construction of such flood control project and alteration, relocation, reconstruction, or abandonment of a county roadway or any portion thereof.

SOURCES: Codes, 1942, § 4767.5; Laws, 1944, ch. 205, §§ 1-4.

§ 51-35-21. Contribution to cost of acquiring land for improvements outside county.

The board of supervisors of any county through any part of which any river or other stream may run, or any part of which any river or stream may touch or border, on which the United States of America or any agency thereof has authorized flood control improvements, including channel clearing, channel improvement, cut-offs, levees, dams or other flood control improvements, when any of the lands of said county will be benefited by flood control improvements so authorized by the United States of America or any agency thereof to be constructed or made outside the border of such county, is hereby authorized and empowered to contribute to the cost of acquisition of land, easements and rights-of-way necessary for the construction of such flood control improvements outside the border of such county, provided such contribution shall be made to that county, flood control district or other agency authorized by law to acquire lands, easements or rights-of-way for such improvements, which acquires the same pursuant to request therefor from the United States of America. However, this authority to purchase lands shall allow only purchase of lands in counties lying wholly or partly within a levee district.

Said board of supervisors is hereby authorized:

(a) To expend for such purposes not to exceed the sum of Ten Thousand Dollars ($10,000.00) from the county general fund, whether or not the expenditure thereof be in excess of the budget for the fiscal year adopted by such board;

(b) To fix and levy annually for such purposes, in addition to any tax that such boards are now authorized by law to levy and in excess of the limitations now provided by law for the levying of taxes by such boards, an ad valorem tax on all the lands and property in the county, not to exceed three (3) mills on the dollar on the assessed valuation on all real and personal property in the county, including railroads; and

(c) To borrow funds not in excess of Ten Thousand Dollars ($ 10,000.00) at interest rates not to exceed five percent (5%) per annum and to issue bonds for such purposes.

SOURCES: Codes, 1942, § 4767.7; Laws, 1950, ch. 422, §§ 1, 2; Laws, 1986, ch. 400, § 39, eff from and after October 1, 1986.

§ 51-35-23. Apportionment of federal funds.

All moneys paid to the State of Mississippi by the United States on account of leases of flood control lands under the provisions of the Flood Control Act, as amended June 28, 1938 (52 U.S. Statutes at Large, page 1221), shall be apportioned by the state treasurer to the several counties in which such flood control lands are located and from which the moneys were received by virtue of the lease of flood control lands, as may be determined by the United States, or department thereof, in settling with the state treasurer under the terms and provisions of the Flood Control Act.

The several sums so apportioned to each county shall be paid over by the state treasurer to the county depository, and fifty per cent (50%) of such funds shall be expended for the benefit of the public schools and fifty per cent (50%) of such funds shall be expended for the benefit of public roads of the county, or counties, in which such flood control lands are situated. Where no schools are located in any affected area entitled to moneys under the provisions of said

Flood Control Act, then all of such moneys so apportioned to such affected area may be spent for the benefit of public roads in the area.

SOURCES: Codes, 1942, § 4768; Laws, 1942, ch. 319; Laws, 1950, ch. 428.

§ 51-35-25. Authorization for annual fee to be imposed on landowners selling reforestation easements; limitation on amount of fee; proceeds to be used to provide road maintenance; fire and police protection; and other services.

(1) As used in this section:

(a) "Project" means the Yazoo Basin, Yazoo Backwater, Mississippi, Project authorized by the Flood Control Act of 18 August 1941 and the Water Resources Development Act of 1986.

(b) "Project area" means land in Humphreys, Issaquena, Sharkey, Warren, Washington and Yazoo Counties located at or below the one hundred-year frequency flood elevation.

(c) "Reforestation easement" means an easement on open agricultural land located in the project area that restricts the future use of the property to woodlands that is purchased from a landowner by the Corps of Engineers or other governmental entity for purposes specifically related to the project.

(2) The board of supervisors of any county in the project area may, in its discretion, require all landowners in the county who sell reforestation easements in the project area for purposes specifically related to the project to annually pay a fee in an amount not to exceed Four Dollars ($4.00) per acre, on each acre of property for which a landowner sold such an easement. The proceeds of the fee shall be used by the board of supervisors to provide services such as road maintenance, fire protection and police protection, and other services necessary for the maintenance and protection of reforestation easements in the project area. If the federal government provides funds to counties in the project area which may be used by the counties to provide such services necessary for the maintenance and protection of reforestation easements in the project area, the board of supervisors of a county receiving such federal funds shall reduce any fee imposed under this section by a proportionate amount based on the ratio that the amount of federal funds received by the county bears to the cost of providing such services.

SOURCES: Laws, 2000, ch. 528, § 1, eff from and after passage (approved Apr. 30, 2000.)

Federal Aspects — Flood Control Act of 1941, see Act of August 18, 1941, 55 Stat. 638, codified generally as 33 USCS § 701b et seq.

Water Resources Development Act of 1986, see Act of November 17, 1986, Pub. L. 99-662, 100 Stat. 4082.

ARTICLE 3.

FLOOD CONTROL DISTRICTS
[REPEALED].

§§ 51-35-101 through 51-35-125. Repealed.

Repealed by Laws, 1997, ch. 403, § 9, eff from and after July 1, 1997.

§ 51-35-101 through § 51-35-105. [Codes, 1942, §§ 4824, 4825, 4769; Laws, 1936, ch. 188, §§ 1, 54-58]

§ 51-35-107. [Codes, 1942, § 4770; Laws, 1936, ch. 188, § 2; Laws, 1954, ch. 154]

§ 51-35-109 through § 51-25-115. [Codes, 1942, §§ 4771-4774, 4780-4782; Laws, 1936, ch. 188, §§ 3-6, 10-12]

§ 51-35-117. [Codes, 1942, §§ 4775, 4778; Laws, 1936, ch. 188, §§ 2, 8; Laws, 1938, ch. 343, § 1; Laws, 1946, ch. 217, § 2]

§ 51-35-119 through § 51-35-125. [Codes, 1942, §§ 4776, 4777, 4779, 4782; Laws, 1936, ch. 188, §§ 8, 9, 12]

Editor's Note — Former §§ 51-35-101 through 51-35-105 provided for the establishment of the 1936 Flood Control Law of Mississippi.

Former § 51-35-107 was entitled: Jurisdiction of chancery court.

Former §§ 51-35-109 through 51-35-115 provided further regulation of the flood control districts.

Former § 51-35-117 provided for hearings before the chancery court.

Former §§ 51-35-119 through 51-35-125 provided for appeal of orders made by the chancery court, and further delineated the powers and organization of the district.

§§ 51-35-127 through 51-35-145. Repealed.

Repealed by Laws, 1997, ch. 403, § 10, eff from and after July 1, 1997.

§ 51-35-127 through § 51-35-145. [Codes, 1942, §§ 4783-4788, 4796, 4798, 4799; Laws, 1936, ch. 188, §§ 13-18, 26-28]

Editor's Note — Former §§ 51-35-127 through 51-35-145 provided for a board of directors for the district, and further delineated the powers and responsibilities of the district.

§§ 51-35-147 through 51-35-193. Repealed.

Repealed by Laws, 1997, ch. 403, § 11, eff from and after July 1, 1997.

§ 51-35-147 through § 51-35-151. [Codes, 1942, §§ 4797, 4801, 4804; Laws, 1936, ch. 188, §§ 27, 30, 34]

§ 51-35-153. [Codes, 1942, § 4789; Laws, 1936, ch. 188, § 19; Laws, 1938, ch. 343, § 2]

§ 51-35-155 through § 51-35-159. [Codes, 1942, §§ 4790-4792; Laws, 1936, ch. 188, §§ 20-22]

§ 51-35-161. [Codes, 1942, § 4793; Laws, 1936, ch. 188, § 23; Laws, 1938, ch. 343, § 3]

§ 51-35-163. [Codes, 1942, § 4794; Laws, 1936, ch. 188, § 24]

§ 51-35-165. [Codes, 1942, § 4795; Laws, 1936, ch. 188, § 25]

§ 51-35-167. [Codes, 1942, § 4800; Laws, 1936, ch. 188, § 29; Laws, 1946, ch. 217, § 1]

§ 51-35-169. [Codes, 1942, § 4802; Laws, 1936, ch. 188, § 31]

§ 51-35-171. [Codes, 1942, § 4803; Laws, 1936, ch. 188, § 32; Laws, 1938, ch. 343, § 4]

§ 51-35-173. [Codes, 1942, § 4803-01; Laws, 1946, ch. 270, § 4]

§ 51-35-175. [Codes, 1942, § 4805; Laws, 1936, ch. 188, § 35]

§ 51-35-177. [Codes, 1942, § 4806; Laws, 1936, ch. 188, § 36; Laws, 1938, ch. 343, § 5; Laws, 1946, ch. 270, § 1]

§ 51-35-179. [Codes, 1942, § 4807; Laws, 1936, ch. 188, § 37; Laws, 1946, chs. 270, § 2, 300, § 1]

§ 51-35-181. [Codes, 1942, § 4808; Laws, 1936, ch. 188, § 38; Laws, 1938, ch. 343, § 6; Laws, 1946, chs. 270, § 3, 300, § 2]

§ 51-35-183. [Codes, 1942, § 4809; Laws, 1936, ch. 188, § 39; Laws, 1968, ch. 361, § 7]

§ 51-35-185 through § 51-35-189. [Codes, 1942, §§ 4810-4812; Laws, 1936, ch. 188, §§ 40-42]

§ 51-35-191. [Codes, 1942, § 4813; Laws, 1936, ch. 188, § 43]

§ 51-35-193. [Codes, 1942, § 4814; Laws, 1936, ch. 188, § 44]

Editor's Note — Former §§ 51-35-147 through 51-35-151 provided further delineation of the powers and responsibilities of the district.

Former § 51-35-153 provide a plan for flood control.

Former §§ 51-35-155 through 51-35-159 provided further delineation of the powers and responsibilities of the district.

Former § 51-35-161 provided for construction and maintenance within the district.

Former § 51-35-163 was entitled: Dominant right of eminent domain.

Former § 51-35-165 was entitled: Exercise of eminent domain rights.

Former § 51-35-167 provided for the enlargement or combination of districts.

Former § 51-35-169 provided for alteration of the official plan for works and improvements within the district.

Former § 51-35-171 provided for the creation of dams and canals within the district.

Former § 51-35-173 provided for bypasses for conveyance of flood waters within the district.

Former § 51-35-175 provided that the district could borrow money for preliminary work.

Former § 51-35-177 provided for a tax for preliminary expenses incurred by the district.

Former § 51-35-179 provides for a tax for maintenance within the district.

Former § 51-35-181 provided that the district could borrow money to acquire land.

Former § 51-35-183 provided for the collection of taxes for district purposes within the district.

Former §§ 51-35-185 through 51-35-189 provided further clarification of the operations of the district.

Former § 51-35-191 was entitled: Hearings before master.

Former § 51-35-193 provided for expenses of the chancellor.

§§ 51-35-195 through 51-35-213. Repealed.

Repealed by Laws, 1997, ch. 403, § 12, eff from and after July 1, 1997.

§ 51-35-195 through § 51-35-207. [Codes, 1942, §§ 4815-4821; Laws, 1936, ch. 188, §§ 45-51]

§ 51-35-209. [Codes, 1942, § 4823; Laws, 1936, ch. 188, § 53; Laws, 1938, ch. 343, § 7]

§ 51-35-211. [Codes, 1942, § 4826; Laws, 1936, ch. 188, § 59]

§ 51-35-213. [Codes, 1942, § 4826-01; Laws, 1946, ch. 217, § 3]

Editor's Note — Former §§ 51-35-195 through 51-35-207 provided further delineation of the powers and responsibilities of the district.

Former § 51-35-209 provided that the lands of the district were not tax exempt.

Former § 51-35-211 provided for a tax limit within the district.

Former § 51-35-213 was entitled: Assurances to Secretary of War.

ARTICLE 5.

URBAN FLOOD CONTROL.

SEC.
51-35-301. Citation.
51-35-303. Legislative determination and declaration of policy.
51-35-305. General authority to organize.
51-35-307. Petition for creation of district.
51-35-309. Proceedings after petition filed.
51-35-311. Hearing.
51-35-313. Appeal as preference case.
51-35-315. Powers of district.
51-35-317. Board of directors.
51-35-319. Construction contracts.
51-35-321. Appropriation permit.
51-35-323. Board of directors to issue bonds.
51-35-325. Declaration of intent to issue revenue bonds; contents and publication of resolution; protest; election on question of issuance of bonds.
51-35-327. Manner of holding election.
51-35-329. Results of election.
51-35-331. Details of bonds.
51-35-333. Bonds payable from ad valorem taxation.
51-35-335. Validation of bonds.
51-35-337. Bonds as legal investments.
51-35-339. District and its bonds exempt from taxation.
51-35-340. Authorization for short-term borrowing by certain levee districts.
51-35-341. Preliminary expenses.
51-35-343. Depository for funds of district.
51-35-345. Agreements with the United States, the state, or political subdivisions.
51-35-347. Cooperation with other governmental agencies.
51-35-349. Urban flood and drainage control law controlling.
51-35-351. Savings clause.

§ 51-35-301. Citation.

This article may be cited as the Urban Flood and Drainage Control Law.

SOURCES: Codes, 1942, § 3665-01; Laws, 1962, ch. 226, § 1, eff from and after passage (approved March 20, 1962).

Cross References — Drainage districts with county commissioners, see § 51-31-7 et seq.

Flood control by drainage districts, see § 51-35-1 et seq.

RESEARCH REFERENCES

ALR. Liability of municipality or other governmental subdivision in connection with flood-protection measures. 5 A.L.R.2d 57.

§ 51-35-303. Legislative determination and declaration of policy.

(a) It is hereby declared, as a matter of legislative determination, that the lands and properties along the waterways and rivers of the state are among its basic resources, that the overflow and surface waters of the state have not heretofore been conserved or fully controlled to realize their full beneficial use, that the control of such waters is necessary to insure adequate protection to the inhabitants of the State of Mississippi and their properties, and to the municipalities of the State of Mississippi, to promote the balanced economic development of the state and to aid in flood control, conservation, and development of lands and property, and of the general health and welfare of the people of the State of Mississippi. It is further determined and declared that the diversion and control of the waters of any rivers on their tributaries and their overflow waters in or near municipalities for the protection and development of domestic, municipal, commercial, industrial, and manufacturing functions, for flood control, and for pollution abatement are, as a matter of public policy, for the general welfare of the entire people of the State of Mississippi.

(b) The creation of flood and drainage control districts to control the waters of the rivers of the State of Mississippi or their tributaries and their overflow waters is determined to be necessary and essential to the accomplishment of the aforesaid purposes and this article operates on a subject in which the state at large is interested. All the terms and provisions of this article are to be liberally construed to effectuate the purposes herein set forth, this being a remedial law.

SOURCES: Codes, 1942, § 3665-02; Laws, 1962, ch. 226, § 2, eff from and after passage (approved March 20, 1962).

§ 51-35-305. General authority to organize.

Flood and drainage control districts may now or hereafter be organized in this state under the provisions of this article, in the manner hereinafter provided, whenever any part of such district lies wholly or partially in or adjacent to any part of a municipality having a population of ten thousand (10,000) or more inhabitants at the time of the filing of the petition to create such district. For the purposes of determining population of any municipality, the last completed census prior to the filing of such petition shall be presumed to be the population of such municipality at the time of the filing of such petition. Each flood and drainage control district shall be an agency of the state and a body politic and corporate, and may be composed of one or more entire municipalities or a part or parts thereof, one or more entire counties or a part or parts thereof, or any combination of counties and municipalities or a part or parts thereof.

SOURCES: Codes, 1942, § 3665-03; Laws, 1962, ch. 226, § 3; Laws, 1999, ch. 510, § 3; Laws, 2001, ch. 568, § 1; Laws, 2006, ch. 337, § 1; Laws, 2008, ch. 311, § 1, eff from and after passage (approved Mar. 17, 2008.)

Editor's Note — On March 1, 2002, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2001, ch. 568.

Cross References — Creation of drainage districts on petition, see § 51-31-21.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 9 et seq.

CJS. 52B C.J.S., Levees and Flood Control §§ 5, 6 et seq.

§ 51-35-307. Petition for creation of district.

Any municipality which may be, in whole or in part, a part of a proposed flood and drainage control district organized under the terms of this article, and when authorized by a resolution of a majority of its governing authorities, may petition the chancery court of the county in which the proposed district is located, or the chancery court of either county in which lands to be included in the proposed district are located if the lands to be included in the proposed district are located in two or more counties, to organize and establish a flood and drainage control district and shall set forth in the petition:

(a) The proposed name of the district and the areas to be included in the district, the areas to be that area directly or indirectly benefited by or protected from overflow or flood waters by the contemplated flood or drainage control improvements and any area which is necessary to be included in the district to carry out the purposes of this article. Any municipality or any part thereof, or any county or any part thereof, which is subject to overflow or flood from waters of any river or its tributaries, or which benefits from improvements, may be included in the district.

(b) The fact that a preliminary report or study to determine the engineering feasibility of constructing flood or drainage control improvements along any river or its tributaries has been made by a competent engineer or engineering firm, or any other competent institution or agency, and that such study or report shows that the construction of such facilities is feasible for flood and drainage control or for any of the other purposes or services contemplated by the legislative declaration of public policy in this article.

(c) The necessity and desirability for the construction of such facilities.

(d) A general description of the purposes of the contemplated works, a general description of the plan including the lands to be protected by said flood or drainage control improvements or otherwise affected thereby, and maps or plats showing the general location of any flood and drainage control improvements and related facilities. The word "project" when used herein shall mean the general plan and purposes of the flood and drainage control improvements and associated development, as set out in this petition to the chancery court, and the words "project area" shall mean the physical location of any levees, channels, drains, or related facilities and associated development, and those areas which are necessary to be included in the district to carry out the purposes of this article, and the area of the district as shown on the plats filed with the chancery court. The words "related facilities" as used in this article shall mean any facilities which are correlated with or used in connection with the project.

The petition shall be filed with as many copies as there are parties defendant. A copy of the preliminary report or study shall be attached to the original petition as an exhibit.

It shall not be necessary that any landowners in the counties to be included in said proposed district be named in the petition or made parties defendant. The chancellor of the chancery court in which said petition shall be filed shall have jurisdiction of the entire flood control district and project area for the purposes of this article. Such jurisdiction may be exercised by the chancellor in termtime or in vacation, as provided in this article.

In the event any part of the proposed flood and drainage control district lies outside the limits of the municipality filing the petition, the county or counties in which lie said lands outside said municipality shall be made a defendant to the petition by service on the clerk of the board of supervisors; however, should said county or counties join in said petition pursuant to a resolution of a majority of the members of the board of supervisors thereof, it shall not be necessary to make said county or counties a defendant to said petition.

In the event any part of said proposed flood and drainage control district lies within any municipality other than said municipality petitioning for the creation of said district, said municipality or municipalities not joining in said petition shall be made a defendant to said petition by service of process on the clerk of said municipality; however, should said municipality join in said petition pursuant to a resolution of a majority of the governing authorities thereof, it shall not be necessary to make said municipality a defendant to said petition.

SOURCES: Codes, 1942, § 3665-04; Laws, 1962, ch. 226, § 4; Laws, 2013, ch. 436, § 1, eff from and after July 1, 2013.

Cross References — Creation of drainage districts on petition, see § 51-31-21 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 17.

50 Am. Jur. 2d, Levees and Flood Control § 6.

CJS. 28 C.J.S., Drains § 3.

52B C.J.S., Levees and Flood Control § 21.

§ 51-35-309. Proceedings after petition filed.

After the filing of the petition, the chancellor shall enter an order fixing the date, either in term time or in vacation, place, and time for a hearing of the cause on the original petition, exhibits, and any answers or other pleadings filed. The chancery clerk shall give notice of such hearing to all persons interested by posting notices thereof at the door of the courthouse of the county or counties in which the district is situated and in at least ten public places in said proposed district, and also by publishing said notice at least once a week for three consecutive weeks in a newspaper published in each of the counties and municipalities proposed to be included in such flood and drainage control district. If there is no newspaper published in any such county or municipality, then it shall be sufficient to publish said notice in a newspaper having a general circulation in such county and municipality. Such notice shall be addressed to the property owners, qualified electors of said proposed district, and all other persons interested, shall state when and in what court said petition was and is filed, shall state the general area included in such district, and shall command all such persons to appear before the chancery court, or the chancellor in vacation, of the county in which said petition was filed and, upon the date fixed by the chancellor, to show cause, if any they can, why the proposed flood and drainage control district should not be organized and established as prayed for in said petition. The date for such hearing shall not be less than five days nor more than forty days after the last publication of such notice. For the purposes of the publication or notice hereinabove mentioned and for the purposes of describing the lands to be included in the district, it shall be sufficient in describing the said lands as all or parts of townships, all or parts of sections, and all or parts of lands lying within the corporate limits of any city, town, or village, and it shall be sufficient to describe the regions and lands proposed to be included in such flood and drainage control district in general terms with a generally accurate description of such regions and lands.

If the court or chancellor finds that the notice or publication was not given as provided in this article, it shall not thereby lose jurisdiction, but the court or chancellor shall order due publication or notice to be given and shall continue the hearing until such publication or notice shall be properly given; and the court or chancellor shall thereupon proceed as though publication or notice had been properly given in the first instance.

Upon the entry of said order fixing the date for said hearing, the chancery clerk of said court shall issue a citation to any county or municipality not joining in said petition and in which may lie any part of the proposed district to show cause, if any they can, why the proposed district should not be created as prayed for in said petition, which said citation shall be forthwith served by the sheriff according to law.

SOURCES: Codes, 1942, § 3665-05; Laws, 1962, ch. 226, § 5, eff from and after passage (approved March 20, 1962).

§ 51-35-311. Hearing.

The chancery court in which said petition shall be filed may hear the petition at any term thereof, or the chancellor of said court may fix a time to hear such petition at any time in vacation, may determine all matters pertaining thereto, may adjourn the hearing from time to time, and may continue the case for want of sufficient notice or other good cause; and if said petition shall prove defective in any manner, the petitioners, upon motion, shall be permitted to amend the same.

Upon the day set for hearing said petition, or a day to which same may be continued by the court or chancellor, all parties interested may appear and contest the same. If upon the hearing of such petition, it is found that such project is feasible from an engineering standpoint and practical, and if the creation of the flood and drainage control district under the terms of this article would meet a public necessity and would be conducive to the public welfare, such court or chancellor shall so find and shall make and enter an order upon the minutes of the said chancery court stating that the said district, under the proposed name thereof, should be organized subject to all of the terms and provisions of this article. The chancellor shall have the power to change, alter, enlarge, diminish, or otherwise vary the areas to be included in such district from those set forth in said petition in such a manner that said district shall best meet the public necessity and be conducive to the public welfare, as disclosed by the evidence at the hearing.

SOURCES: Codes, 1942, §§ 3665-06, 3665-07; Laws, 1962, ch. 266, §§ 6, 7, eff from and after passage (approved March 20, 1962).

§ 51-35-313. Appeal as preference case.

Any person interested in or aggrieved by the final order of the court or of the chancellor, creating the district or dismissing the petition, and who was a party to the proceedings in the chancery court, may prosecute an appeal therefrom within ten days from the date of such decree by furnishing an appeal bond in the sum of five hundred dollars ($500.00) with two good and sufficient sureties, conditioned to pay all costs of the appeal in the event the decree is affirmed. Such appeal bond shall be subject to the approval of the chancery clerk. When the transcript of the record of the case shall be filed in the office of the supreme court, the appellee having been summoned to appear and answer the appeal, ten days after service of the summons on appellee or his attorney the court shall consider such case as entitled to be heard. Any party to any proceedings in any court involving any of the provisions of this article may waive any time for filing pleadings so as to obtain an earlier hearing.

Any appeal from such order or decree of the chancery court or chancellor shall be a preference case in the supreme court and shall be tried at the earliest moment convenient with said court.

SOURCES: Codes, 1942, § 3665-08; Laws, 1962, ch. 226, § 8, eff from and after passage (approved March 20, 1962).

Cross References — Appeals from judgments and decrees generally, see § 11-51-3 et seq.

RESEARCH REFERENCES

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts § 26.

CJS. 28 C.J.S., Drains §§ 51 et seq.

§ 51-35-315. Powers of district.

The said district through its board of directors is hereby empowered:

(a) To impound, divert, change, alter, or otherwise control overflow water and the surface water of any river or its tributaries within the project area within or without such district at such place or places and in such amount by the diversion of rivers or their tributaries, by the construction of a dam or dams, a levee or levees, a channel or channels, reservoir or reservoirs, works, pumps, plants, and any other necessary or useful related facilities contemplated or described as a part of the project within or without the district. The district is also empowered to construct or otherwise acquire within the project area all works, plants, or other facilities necessary or useful to the project for the purpose of carrying out the provisions of this article.

(b) To cooperate with the United States of America in the construction of flood and drainage control improvements, for the protection of property, controlling floods, reclaiming overflow lands, and preventing overflows in this state; and for the purpose of operating and maintaining dams, reservoirs, channels, levees, pumps, and other flood control works and improvements which may be constructed by the United States of America or any department or agency thereof.

(c) When said project, or any part thereof, is to be constructed by the United States of America or any agency or department thereof, to furnish, without cost to the United States of America, all lands, easements, and rights-of-way necessary for the construction of the project or any part thereof; to hold and save the United States free from damages due to said construction; to make, without cost to the United States, any changes, alterations, or relocation of any public utilities, roads, highways, bridges, buildings, or local betterment made necessary by the work; to provide assurances to the United States of America that encroachment on the levees, improved channels, and pond areas will not be permitted; to maintain and operate the improvements after completion thereof in accordance with regulations prescribed by the United States of America or any agency or department thereof; to contribute in cash to the United States of America, or any agency or department thereof, such sums of money as shall be required by the United States of America, or any agency or department thereof, as a condition for the construction of any improvements by the United States or any agency or department thereof; and generally, without being limited by any of the above, to carry out and faithfully perform any obligations cast upon the district as a condition to the construction of any flood control work, project, or improvements by the United States of America, or any agency or department thereof, and to give assurances to the United States of America that the district will so do.

(d) To construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(e) To prevent or aid in the prevention of damage to person or property from the waters of any river or any of its tributaries.

(f) To acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges, and functions conferred upon the district by this article.

(g) To acquire by condemnation any and all property of any kind, real, personal, or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges, and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroads, telephone, or telegraph companies. For the purposes of carrying out this article, the right of eminent domain of such district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power, and other companies or corporations, and shall be sufficient to enable the acquisition of county roads, state highways, or other public property in the project area, and the acquisition, or relocation, of the above-mentioned utility property in the project area.

The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors; and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However,

1. In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area, sand and gravel not being considered as minerals within the meaning of this section; and

2. No person or persons owning the mining rights, drilling rights, or the right to share in production shall be prevented from exploring,

developing, or producing oil or gas with necessary rights-of-way for ingress, egress, pipelines, and other means of transporting such products by reason of the inclusion of such lands or mineral interests within the project area, whether below or above the waterline, but any such activities shall be under such reasonable regulations and limitations by the board of directors as will adequately protect and reduce the impacts to the project; and

3. In drilling and developing, such persons are hereby vested with a special right to have such mineral interest integrated and their lands developed in such drilling unit or units as the State Oil and Gas Board shall establish after due consideration of the rights of all of the owners to be included in the drilling unit.

(h) To require the necessary relocation of bridges, roads, and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas pipelines and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with such owners regarding the payment of the cost of such relocation. It is further provided that the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of such road, highway, railroad, telephone, and telegraph lines and properties, electrical power lines, gas pipelines and mains and facilities, and to convey the same to the owners thereof in connection with such relocation as a part of the construction of the project.

(i) To overflow and inundate any public lands and public and private property, including sixteenth section lands and in-lieu lands, within the project area.

(j) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate any and all facilities of any kind within the project area necessary or convenient to the project and to the exercise of such powers, rights, privileges, and functions.

(k) To sue and to be sued in its corporate name and shall be considered a political subdivision pursuant to Section 11-46-1.

(*l*) To adopt, use, and alter a corporate seal.

(m) To make bylaws for the management and regulation of its affairs.

(n) To employ engineers, attorneys, fiscal agents, advisors, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and facilities of the district and carry out the provisions of this article, and to pay reasonable compensation for such services.

(o) To make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this article.

(p) To make or cause to be made surveys and engineering investigations relating to the project, or related projects, for the information of the district to facilitate the accomplishment of the purposes for which it is created.

(q) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary associations to such agencies for grants to construct, maintain, or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(r) To do any and all other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by this article or any other act of law.

(s) To make such contracts in the issuance of bonds as may be necessary to insure the marketability thereof.

(t) To operate and maintain within the project area, with the consent of the governing body of any city, town or county located within the district, any works, plants, or facilities of any such city, town, or county deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell, or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) To make such changes in location of levees, channels, drains, or related facilities, or other changes, alterations, or modifications in the plan filed with the petition creating the district, which may be necessary for the accomplishment of the general purposes of the district.

(w) In the event the board of directors of the district determines that it would meet a public necessity and would be conducive to the public welfare to vary, alter, enlarge, diminish, or otherwise change the areas included in the district for the purpose of carrying out any of the purposes contemplated by this article, the board of directors of the district may at any time file a petition in the chancery court of the county having jurisdiction of the district, setting forth the reasons for said change in said area, and the chancery court or the chancellor in vacation shall have the power and jurisdiction to vary, alter, enlarge, diminish, or otherwise change said area included in the district under the procedure set forth in Sections 51-35-309 through 51-35-313. However, such action by the chancery court or the chancellor in vacation shall not affect or impair any financial obligations of said district as they existed prior to such action, nor shall any liens or rights of any bondholders upon the lands included in the district be impaired by such action.

(x) All equipment, supplies, heavy equipment, contracts on lease-purchase agreements, and office supplies shall be purchased pursuant to state purchasing law.

SOURCES: Codes, 1942, 3665-09; Laws, 1962, ch. 226, § 9; Laws, 2013, ch. 436, § 2, eff from and after July 1, 2013.

Cross References — Right of eminent domain generally, see § 11-27-1 et seq.

Powers of board of water commissioners, see § 51-3-25.
Powers of State Oil and Gas Board, see § 53-1-17.

RESEARCH REFERENCES

ALR. Liability of municipality or other governmental subdivision in connection with flood-protection measures. 5 A.L.R.2d 57.

Am Jur. 25 Am. Jur. 2d, Drains and Drainage Districts §§ 31 et seq.

26 Am. Jur. 2d, Eminent Domain § 65.

CJS. 52B C.J.S., Levees and Flood Control §§ 5, 6 et seq.

§ 51-35-317. Board of directors.

All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) In the event the proposed flood and drainage control district lies wholly within the limits of one (1) municipality, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors.

(b) In the event the proposed flood and drainage control district is comprised of lands lying partly in a municipality and partly outside the limits of a municipality but wholly in one (1) county, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors. However, should the assessed valuation of land and property and improvements in said district outside the municipality, according to the last preceding tax assessment roll for county and state taxes, exceed said assessment for the land and property and improvements of the district lying within the municipality, the board of supervisors of the county in which said district lies shall appoint three (3) directors and said municipality shall appoint two (2) directors.

(c) In the event the proposed flood and drainage control district is comprised of lands lying, in whole or in part, in one or more municipalities which are in existence at the time of the creation of such district, and in one or more counties and not falling within the description of (a) or (b) above, each such municipality shall appoint one (1) director and the board of supervisors of each county in which part of the lands of the proposed district lie shall appoint one (1) director. In the event there are one or more new municipalities incorporated within the district after the organization of such district, each such municipality shall be given a director of the district. However, in the event that selection of directors in said manner results in an even number of directors, the Governor of the State of Mississippi shall appoint one (1) additional director who is a member of the State Fair Commission so that there shall be an odd number of directors.

(d) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(e) Each director shall receive a fee not to exceed such amount as set forth in Section 25-3-69 for attending each meeting of the board and for each day actually spent in attending to the necessary business of the district and shall receive reimbursement for actual expenses thus incurred upon express authorization of the board.

(f) The board of directors shall annually elect from its number a president and a vice president of the district and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all the duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars ($50,000.00), as set by the board of directors, and each director shall give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), and the premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of the office and account for all money which shall come into his custody as treasurer or director of the district.

(g) In the event a county or municipality entitled to appoint a director or directors to the district shall not do so within twenty (20) days from the date of the order of the chancery court creating the district, the chancery court or the chancellor in vacation shall forthwith exercise the right of said county or municipality in appointing a director or directors.

(h) Each director shall hold office for a period of four (4) years from the date of his appointment. However, in order to insure continuity of experience among the members of the board of directors in any district created after March 26, 1981, one (1) member of the initial board of directors shall hold office for only one (1) year, one (1) member shall hold office for only two (2) years, and one (1) member shall hold office for only three (3) years, and, at the initial meeting of the board of directors, they shall determine by lot which of their members shall serve for only one (1), two (2), or three (3) years.

(i) No person shall be disqualified from serving as a member of the board of directors by virtue of his having previously served as a director, by virtue of his holding any other office, political or otherwise, or by virtue of his not residing in or owning lands in said district.

SOURCES: Codes, 1942, § 3665-10; Laws, 1962, ch. 226, § 10; Laws, 1981, ch. 444, § 1; Laws, 2013, ch. 436, § 3, eff from and after July 1, 2013.

§ 51-35-319. Construction contracts.

All construction contracts of the district, which shall be let solely by the district shall comply with state purchasing and bid laws and the board of directors of the district shall award the contract pursuant to state purchasing and bid laws. The contractor will comply with the terms imposed by such board and enter into bond with sufficient sureties, to be approved by the board, in such penalty as shall be fixed by such board, but in no case to be less than the contract price, conditioned for the prompt, proper, and efficient performance of the contract.

SOURCES: Codes, 1942, § 3665-11; Laws, 1962, ch. 226, § 11; Laws, 2013, ch. 436, § 4, eff from and after July 1, 2013.

Cross References — Bonds securing public construction contracts and suits thereon, see § 31-5-51 et seq.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Works and Contracts §§ 1 et seq.

CJS. 52B C.J.S., Levees and Flood Control §§ 9 et seq.

§ 51-35-321. Appropriation permit.

The district is empowered to obtain through appropriate hearings an appropriation permit or permits from the Board of Water Commissioners of the State of Mississippi, as provided in Section 51-3-31.

SOURCES: Codes, 1942, § 3665-12; Laws, 1962, ch. 226, § 12, eff from and after passage (approved March 20, 1962).

§ 51-35-323. Board of directors to issue bonds.

The board of directors of the district is hereby authorized and empowered to issue bonds of the district for the purpose of paying the costs of creating said districts, acquiring, owning, constructing, operating, repairing, and maintaining the projects and works specified herein, including related charges, interest during construction, engineering, legal, and other expenses incidental to and necessary for the foregoing, or for the carrying out of any power conferred by this article. Said board of directors is authorized and empowered to issue such bonds at such times and in such amounts as shall be provided for by resolution of the said board of directors. After the issuance and sale of the amount of bonds first voted in any such district under the provisions of this article, no additional bonds shall thereafter be voted, issued, or sold under the provisions of this article to an amount which, when added to the amount of outstanding bonds, will exceed twenty per cent (20%) of the assessed value of all taxable property within such district, according to the then last completed state and county assessment for taxation. All such bonds so issued by said district shall be secured solely by the pledge of the avails of the ad valorem tax levy provided for in this article, such bonds shall not constitute general obligations of the State of Mississippi or of the counties or municipalities comprising said district, and such bonds shall not be secured by a pledge of the full faith, credit, and resources of said state or of said counties or municipalities. Bonds of the district shall not be included in computing any present or future debt limit of any county or municipality in such district under any present or future law.

SOURCES: Codes, 1942, § 3665-13; Laws, 1962, ch. 226, § 13, eff from and after passage (approved March 20, 1962).

Cross References — Advertising of sale of bonds, see § 31-19-25.

Additional powers conferred in connection with issuance of bonds, see §§ 51-35-331 and 31-21-5.

RESEARCH REFERENCES

ALR. Power of governmental unit to issue bonds as implying power to refund them. 1 A.L.R.2d 134.

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 55 et seq.

CJS. 52B C.J.S., Levees and Flood Control § 25.

§ 51-35-325. Declaration of intent to issue revenue bonds; contents and publication of resolution; protest; election on question of issuance of bonds.

Before issuing any revenue bonds hereunder, the board of directors of the district shall adopt a resolution declaring its intention to so issue, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the date upon which the governing body proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such district, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in the district, and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in the district. If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors living or owning property in the district shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as herein provided. If no such protest be filed, then such bonds may be issued without an election at any time within a period of two (2) years after the date specified in the above-mentioned resolution. However, the board of directors of the district, in its discretion, may nevertheless call an election on the question of the issuance of the bonds, in which event it shall not be necessary to publish the resolution declaring its intention to issue bonds as herein provided.

SOURCES: Codes, 1942, § 3665-14; Laws, 1962, ch. 226, § 14; Laws, 2013, ch. 436, § 5, eff from and after July 1, 2013.

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 113 et seq.

CJS. 64A C.J.S., Municipal Corporations §§ 2145 et seq.

§ 51-35-327. Manner of holding election.

Such elections shall be held, as far as is practicable, in the same manner as elections are held in county bond elections. In conducting such elections, the flood and drainage control district shall be divided into election districts in accordance with the then existing election districts created under the provisions of Section 23-5-9 of the Mississippi Code of 1972; and there shall be one voting place in each election district, which voting place shall be within such election district and within such flood and drainage control district. The election commissioners shall furnish at each voting place a list of the qualified electors residing in the flood and drainage control district who are also qualified electors in such voting district. At such election, all qualified electors residing in said district may vote, the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE", and the voter shall vote by placing a cross (x) or check mark (✓) opposite his choice on the proposition.

SOURCES: Codes, 1942, § 3665-15; Laws, 1962, ch. 226, § 15, eff from and after passage (approved March 20, 1962).

Editor's Note — Section 23-5-9 referred to in this section was repealed by Laws of 1986, ch. 495, § 335, eff from and after January 1, 1987.

§ 51-35-329. Results of election.

When the results of the election on the question of the issuance of such bonds shall have been canvassed by the county election commissioners and certified by them to the board of directors of the district, it shall be the duty of such board of directors to determine and adjudicate whether or not a majority of the qualified electors who voted in such election voted in favor of the issuance of such bonds. Unless a majority of the qualified electors who voted in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should a majority of the qualified electors who vote in such election vote in favor of the issuance of such bonds, then the board of directors may issue such bonds, either in whole or in part, within five years from the date of such election or within five years after the final favorable termination of any litigation affecting the issuance of such bonds, as such board of directors shall deem best.

SOURCES: Codes, 1942, § 3665-16; Laws, 1962, ch. 226, § 16, eff from and after passage (approved March 20, 1962).

RESEARCH REFERENCES

Am Jur. 64 Am. Jur. 2d, Public Securities and Obligations §§ 139 et seq.

CJS. 64A C.J.S., Municipal Corporations §§ 2157-2159.

§ 51-35-331. Details of bonds.

All such bonds provided by this article shall be negotiable instruments within the meaning of the Uniform Commercial Code, shall be lithographed or engraved and printed in two (2) or more colors to prevent counterfeiting, shall be in denominations of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), shall be registered as issued, and shall be numbered in a regular series from one (1) upward. Each such bond shall specify on its face the purpose for which it was issued and the total amount authorized to be issued, shall be payable to bearer, and the interest to accrue thereon shall be evidenced by proper coupons to be attached thereto. Such bonds shall bear interest at such rate or rates, not exceeding that allowed in Section 75-17-103, Mississippi Code of 1972. They shall mature annually in such amounts and at such times as shall be provided by the resolution of the board of directors. However, no bond shall have a longer maturity than forty (40) years from the date of issuance thereof. The denomination, form, and place or places of payment of such bonds shall be fixed in the resolution of the board of directors of the district. Such bonds shall be signed by the president and the secretary of such board, with the seal of the district affixed thereto, but the coupons may bear only the facsimile signatures of such president and secretary. All interest accruing on such bonds so issued shall be payable semiannually, except that the first interest coupon attached to any such bond may be for any period not exceeding one (1) year.

If so specified in the resolution directing the issuance thereof, such bonds may be called in, paid, or redeemed in inverse numerical order prior to maturity, upon not less than thirty (30) days notice to the paying agent or agents designated in such bonds, and at such premium as may be designated in such bonds. However, in no case shall any premiums exceed the maximum interest rate allowed on such bonds.

All such bonds shall contain in substance a statement to the effect that they are secured solely by a pledge of the ad valorem tax levy provided in this article, they do not constitute general obligations of the state of Mississippi or of the counties or municipalities comprising said district, and they are not secured by a pledge of the full faith, credit and resources of said state or of such counties or municipalities.

All such bonds as provided for herein shall be sold at public sale as now provided by law. Except as otherwise provided hereinabove, no such sale shall be at a price so low as to require the payment of interest on the money received therefor at more than the maximum interest rate allowed on such bonds computed with relation to the absolute maturity of the bonds, in accordance with standard tables of bond value, excluding from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

This article shall be full and complete authority for the issuance of the bonds provided for herein, and no restriction or limitation otherwise prescribed by law shall apply herein.

SOURCES: Codes, 1942, § 3665-17; Laws, 1962, ch. 226, § 17; Laws, 1981, ch. 444, § 2; Laws, 1983, ch. 494, § 24, ch. 541, § 29, eff from and after passage (approved April 25, 1983).

RESEARCH REFERENCES

CJS. 62 C.J.S., Municipal Corporations §§ 2168 et seq.

§ 51-35-333. Bonds payable from ad valorem taxation.

To provide funds for the payment of the principal of, interest on, and other charges in connection with bonds issued under the provisions of this article, to provide funds for the annual expenses of operations of the district, and to provide funds for carrying out any of the purposes of this article, the district is empowered to levy annually a special tax upon all the taxable property within such district on or before the first Monday of September of each year and shall certify the levy to the boards of supervisors of the various counties in said district. It shall be the duty of the boards of supervisors of each county to make said levy on each tract of land or other property in said district according to the assessed valuation thereof. Such taxes shall be collected by the tax collectors of the respective counties in said district, who shall deposit them in such depository as shall be selected by the board of directors of the district. The tax collector shall receive a sum not greater than one fifth of one percent (⅕ of 1%) of the amount collected for his services in making such collection, and said fee shall be paid into the county general fund. It shall be the duty of the board of directors to levy a tax sufficient to pay the bonds and the interest thereon as such bonds and interest become due, to pay for the annual expense of operation of the district, and to provide funds for carrying out any of the purposes of this article.

SOURCES: Codes, 1942, § 3665-18; Laws, 1962, ch. 226, § 18; Laws, 1968, ch. 361, § 3, eff from and after January 1, 1972.

Cross References — Jurisdiction and powers of board of supervisors generally, see § 19-3-41.

Fees for tax collectors generally, see § 25-7-21.

Pledge of avails of ad valorem tax authorized in this section for payment of short-term borrowing by levee districts, see § 51-35-340.

§ 51-35-335. Validation of bonds.

All bonds issued pursuant to this article shall be validated as now provided by law by Sections 31-13-1 through 31-13-11 Mississippi Code of 1972. The services of the state's bond attorney may be employed in the preparation of such bond resolutions, forms, or proceedings as may be necessary, for which he shall be paid a reasonable fee. Such validation proceedings shall be instituted in the chancery court of the county having jurisdiction of the district, but notice of such validation proceedings shall be published at least two times in a newspaper of general circulation and published in each of the counties comprising the district, the first publication of which in each case shall be made at least ten days preceding the date set for the validation.

SOURCES: Codes, 1942, § 3665-19; Laws, 1962, ch. 226, § 19, eff from and after passage (approved March 20, 1962).

§ 51-35-337. Bonds as legal investments.

All bonds of the district shall be and are hereby declared to be legal and authorized investments for public funds of counties, cities, towns, school districts, banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, and for funds of the Mississippi Public Employees' Retirement System. Such bonds shall be eligible to secure the deposit of any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Mississippi; and such bonds shall be lawful and sufficient security for said deposits to the extent of their value, when accompanied by all unmatured coupons appurtenant thereto.

SOURCES: Codes, 1942, § 3665-20; Laws, 1962, ch. 226, § 20, eff from and after passage (approved March 20, 1962).

Cross References — Investments by fiduciaries of funds held in trust generally, see § 91-13-1 et seq.

§ 51-35-339. District and its bonds exempt from taxation.

The accomplishment of the purposes stated in this article being for the benefit of the people of this state and for the improvement of their properties and industries, the district, in carrying out the purposes of this article, will be performing an essential public function and shall not be required to pay any tax or assessment on the project and related facilities or any part thereof. The interest on the bonds issued hereunder shall at all times be free from any taxation within this state, and the state hereby covenants with the holders of any bonds to be issued hereunder that the district shall not be required to pay any taxes or assessments imposed by the state or any of its political subdivisions or taxing districts.

SOURCES: Codes, 1942, § 3665-21; Laws, 1962, ch. 226, § 21, eff from and after passage (approved March 20, 1962).

§ 51-35-340. Authorization for short-term borrowing by certain levee districts.

The board of directors of the district is hereby authorized and empowered, in its discretion, to borrow money from time to time, in an amount not to exceed Nine Hundred Thousand Dollars ($900,000.00) in the aggregate outstanding at any one (1) time, in order to defray expenses of the district for the purpose of acquiring, repairing, maintaining, strengthening and rebuilding dams, reservoirs, channels, levees, pumps and other flood control works and improvements for the district.

Before any money is borrowed under the provisions of this section, the board of directors shall adopt a resolution declaring the necessity for such borrowing and specifying the purpose for which the money borrowed is to be expended, the amount to be borrowed, the date or dates of the maturity thereof, and how such indebtedness is to be evidenced. The resolution shall be certified over the signature of the president of the board of directors.

The borrowing shall be evidenced by negotiable notes or certificates of indebtedness of the district which shall be signed by the president and secretary of the district. All such notes or certificates of indebtedness shall be offered at public sale by the district after not less than ten (10) days' advertising in a newspaper having general circulation within the district. Each sale shall be made to the bidder offering the lowest rate of interest or whose bid represents the lowest net cost to the district; however, the rate of interest shall not exceed ten percent (10%). No such notes or certificates of indebtedness shall be issued and sold for less than par and accrued interest. All notes or certificates of indebtedness shall mature in approximately equal installments of principal and interest over a period not to exceed fifteen (15) years from the dates of the issuance thereof. Principal shall be payable annually, and interest shall be payable annually or semiannually; provided, however, that the first payment of principal or interest may be for any period not exceeding one (1) year. Provided, however, if negotiable notes are outstanding from not more than one (1) previous issue authorized under the provisions of this section, then the schedule of payments for a new or supplementary issue may be so adjusted that the schedule of maturities of all notes or series of notes hereunder shall, when combined, mature in approximately equal installments of principal and interest over a period of fifteen (15) years from the date of the new or supplementary issue; or, if a lower interest rate will thereby be secured on notes previously issued and outstanding, a portion of the proceeds of any issue authorized hereunder may be used to refund the balance of the indebtedness previously issued under the authority of this section. Such notes or certificates of indebtedness shall be issued in such form and in such denominations as may be determined by the board of directors and may be made payable at the office of any bank or trust company selected by the board of directors. In such case, funds for the payment of principal and interest due thereon shall be provided in the same manner provided by law for the payment of the principal and interest due on bonds issued by the board of directors.

For the prompt payment of notes or certificates of indebtedness at maturity, both principal and interest, there is hereby pledged the avails of the ad valorem tax authorized in Section 51-35-333, Mississippi Code of 1972, and any other available funds of the district designated by the board of directors. Pledged funds shall be paid into a sinking fund and used exclusively for the payment of principal of and interest on the notes or certificates of indebtedness. Until needed for expenditure, monies in the sinking fund may be invested in the same manner as municipalities are authorized by law to invest surplus funds.

The proceeds of any notes or certificates of indebtedness issued under the provisions of this section shall be placed in a special fund and shall be expended only for the purpose or purposes for which they were issued as shown by the resolution authorizing the issuance thereof. If a balance shall remain of the proceeds of such notes or certificates of indebtedness after the purpose or purposes for which they were issued shall have been accomplished, such balance shall be used to pay such obligations at or before maturity and may be transferred to any sinking fund previously established for the payment thereof.

Proceeds from the sale of notes or certificates of indebtedness not immediately necessary for expenditure shall be invested in the same manner as surplus funds of municipalities may be invested.

SOURCES: Laws, 1991, ch. 617, § 1, eff from and after passage (approved May 3, 1991).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 51-35-341. Preliminary expenses.

The district may borrow funds for a period of not to exceed three years and may renew and extend said loans from time to time, from any city, municipality, county, state, the United States of America, or any of its agencies or departments, or from any other source to pay the preliminary expenses of organizing the district or for carrying out any of the purposes of this article, including engineering services, attorneys fees and expenses, and other organization and administration expenses, on such terms of repayment as the board of directors shall determine; and any municipality or county in which any part of the district shall lie may advance or loan funds to said district for such purposes. Any such municipality or county making such loan or advance is authorized and empowered to borrow money for a period not to exceed three years from the date of such borrowing for the purpose of making such loan or advance. The board of directors is hereby authorized to repay any such advances from the proceeds of any bonds issued under the provisions of this article. In the event any said loan or advance is not paid at maturity thereof, the district is authorized to levy a tax on the lands of the district under the provisions of this article for the repayment thereof.

SOURCES: Codes, 1942, § 3665-22; Laws, 1962, ch. 226, § 22, eff from and after passage (approved March 20, 1962).

§ 51-35-343. Depository for funds of district.

(a) The board of directors shall designate one or more banks within any county in which any part of the district shall lie to serve as depositories for the funds of the district, and all funds of the district shall be deposited in such depository bank or banks.

(b) Before designating a depository bank or banks, the board of directors shall issue a notice stating the time and place the board will meet for such purpose and inviting the banks in the counties in which any part of the district shall lie to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. Such notice shall be published one time in a newspaper or newspapers having general circulation in the district and specified by the board.

(c) At the time mentioned in the notice, the board shall consider the applications and the management and condition of the banks filing them, and shall designate as depositories the bank or banks which offer the most favorable terms and conditions for the handling of the funds of the district and which the board finds have proper management and are in condition to warrant handling of district funds. Membership on the board of directors of an officer or director of a bank shall not disqualify such bank from being designated as a depository.

(d) If no applications acceptable to the board are received by the time stated in the notice, the board shall designate some bank or banks within or without the district upon such terms and conditions as it may find advantageous to the district.

SOURCES: Codes, 1942, § 3665-23; Laws, 1962, ch. 226, § 23, eff from and after passage (approved March 20, 1962).

§ 51-35-345. Agreements with the United States, the state, or political subdivisions.

The board of directors of the district is hereby authorized and empowered to negotiate and contract with the United States of America, the State of Mississippi, or any political subdivision thereof concerning the location, relocation, alteration, construction, changing, or closing of any highway, street, bridge, or roadway, or for the facilities appurtenant thereto, and all lands, easements, and rights of way necessary thereto.

SOURCES: Codes, 1942, § 3665-24; Laws, 1962, ch. 226, § 24, eff from and after passage (approved March 20, 1962).

§ 51-35-347. Cooperation with other governmental agencies.

The district shall have authority to act jointly with political subdivisions of the state, its agencies, and commissions and instrumentalities thereof, with other states, with municipalities, with the United States of America, and agencies, departments, and instrumentalities thereof, in the performance of the purposes and services authorized in this article, upon such terms as may be agreed upon by the directors.

SOURCES: Codes, 1942, § 3665-25; Laws, 1962, ch. 226, § 25, eff from and after passage (approved March 20, 1962).

§ 51-35-349. Urban flood and drainage control law controlling.

The provisions of any other law, general, special, or local, except as provided in this article, shall not limit or restrict the powers granted by this article.

SOURCES: Codes, 1942, § 3665-26; Laws, 1962, ch. 226, § 26, eff from and after passage (approved March 20, 1962).

§ 51-35-351. Savings clause.

Nothing in this article shall be construed to violate any provision of the federal or state constitutions, and all acts done under this article shall be done in such manner as will conform thereto, whether herein expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the district shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this article shall be invalid, such fact shall not affect the creation of the district or the validity of any other provision of this article.

SOURCES: Codes, 1942, § 3665-27; Laws, 1962, ch. 226, § 27, eff from and after passage (approved March 20, 1962).

CHAPTER 37

Watershed Districts

Watershed Repair and Rehabilitation Cost-Share Program 51-37-1

WATERSHED REPAIR AND REHABILITATION COST-SHARE PROGRAM

Sec.
51-37-1. Legislative intent.
51-37-3. Watershed Repair and Rehabilitation Cost-Share Program.

§ 51-37-1. Legislative intent.

The Legislature has previously stated its desire to improve the quality of water, prevent soil erosion and alleviate flood damage in Mississippi, and great strides have been made through the use of water impoundment structures constructed through federal watershed construction funding programs. Flood control structures have provided secondary benefits including improvement of water quality and increased recreational opportunities. Flaws have become apparent in the system of maintenance established to protect these flood control structures to the point that many of the structures are in dire need of repair and pose a serious threat to property as well as loss of secondary benefits.

SOURCES: Laws, 1997, ch. 477, § 1, eff from and after July 1, 1997.

§ 51-37-3. Watershed Repair and Rehabilitation Cost-Share Program.

(1) There is created the Mississippi Watershed Repair and Rehabilitation Cost-Share Program to be administered by the Mississippi Soil and Water Conservation Commission ("commission") through the Soil and Water Cost-Share Program for the purpose of assisting local watershed districts in the repair, rehabilitation or removal of water impoundment structures constructed with financing from the United States of America under Public Law 534 and Public Law 566. For the purposes of this section, the term "watershed district" shall include any "watershed district, soil and water conservation district, drainage district, flood control district, or water management district authorized by the Mississippi Legislature which has the management responsibility for any Public Law 534 or Public Law 566 water impoundment structure."

(2) The Legislature may appropriate such sums as it may deem necessary to a special fund for the commission to be expended by them in accordance with this section. The commission is authorized to receive and expend any funds appropriated by the federal government for the purposes of this section. The commission is authorized to receive and expend proceeds from bonds issued under Sections 1 through 14 of House Bill No. 1783, 1998 Regular Session, Section 1 of Chapter 502, Laws of 2008, and Section 17 of Chapter 530, Laws

of 2014. Unexpended amounts remaining at the end of the fiscal year shall not lapse into the State General Fund.

(3) The commission shall:

(a) Establish rules and regulations for participation and assistance under this cost-share program consistent with the requirements of this section.

(b) Establish a priority list of the watershed structures for which cost-share assistance has been applied.

(c) Determine which structures shall be eligible for cost-share assistance.

(d) Establish maximum sums and cost-share rates which any eligible entity may receive for implementation of the cost-share assistance.

(e) Award cost-share assistance in accordance with the rules and regulations. The awarding of cost-share assistance may be in the form of direct payment to the watershed district or may be in the form of the commission's directly managing the repair, renovation or removal as agreed between the commission and the watershed district.

(4) Any watershed district must meet the following minimum criteria to be eligible for consideration for approval of cost-share assistance under this program:

(a) The water impoundment structure has been certified not to meet the technical standards established by the United States Department of Agriculture, Natural Resources Conservation Service, as a result of needed maintenance, structural defect, equipment failure or public access.

(b) A maintenance agreement has been reached with either the watershed district or the landowner upon which the structure is situated. Any impoundment structure where the watershed district is the maintainer shall have a new maintenance agreement which includes the concurrence and approval of the county board of supervisors or city governmental authority as guarantor of the performance of the watershed district.

(c) The local watershed district, county board of supervisors or landowner upon whose land the structure is located must agree to provide financial or in-kind match at the rate established by the commission.

(5) The impoundment structure may be situated on land owned by a private landowner or any state or federal governmental entity.

(6) Any county board of supervisors or municipal governmental authority, within whose boundaries a qualifying impoundment structure lies, wishing to participate in this program shall have the authority to expend public monies, personnel, and/or equipment on private property to repair, renovate or remove any impoundment structure authorized by the commission for participation in this program.

(7) This section is supplemental to any powers and authorities granted watershed districts, county boards of supervisors, or municipal governmental authorities and does not supersede existing law.

SOURCES: Laws, 1997, ch. 477, § 2; Laws, 2008, ch. 502, § 2; Laws, 2014, ch. 530, § 18, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (7) by adding a period at the end of the subsection. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Note — House Bill No. 1783 of the 1998 Regular Session, referred to in subsection (2), became Chapter 481, Laws of 1998, effective from and after March 26, 1998. Sections 1 through 14 of that law related to bonding authority for the Mississippi Soil and Water Conservation Commission to provide funds for the program established in this section and were not codified by the Revisor of Statutes.

Laws of 2014, ch. 530, § 47 provides:

"SECTION 47. Section 46 of this act shall take effect and be in force from and after January 1, 2014, Section 39 of this act shall take effect and be in force from and after its passage [April 24, 2014], and the remainder of this act shall take effect and be in force from and after July 1, 2014."

CHAPTER 39

Storm Water Management Districts

Sec.
51-39-1. Short title.
51-39-3. Legislative findings and declarations.
51-39-5. Definitions.
51-39-7. Creation of storm water management district; resolution.
51-39-9. Publication of resolution; referendum on creation of district upon filing of protest.
51-39-11. Adoption of resolution or ordinance authorizing district.
51-39-13. Payment of costs.
51-39-15. Appeal of resolution or ordinance.
51-39-17. Incorporation of district; incorporation agreement; publication of notice of incorporation; filing of required documents; issuance of certificate of incorporation.
51-39-19. Amendment of incorporation agreement; withdrawal of member from district.
51-39-21. Board of commissioners.
51-39-23. Board authorized to contract with members to provide support services.
51-39-25. Rights and powers of district.
51-39-27. Regulations and best management practices.
51-39-29. Power of eminent domain.
51-39-31. Public agencies authorized to contract with district for facilities and services.
51-39-33. Storm water management plan.
51-39-35. Authority of public agencies to assist in attaining objectives of this chapter.
51-39-37. Property and revenue of district exempt from taxation.
51-39-39. Filing of financial reports.
51-39-41. District not authorized to deny access to system to person holding appropriate permits.
51-39-43. Chapter constitutes full and complete authority for creation of district.

§ 51-39-1. Short title.

This chapter shall be known and cited as the "Mississippi Storm Water Management District Act."

SOURCES: Laws of 2000, ch. 597, § 1, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — Laws of 2000, ch. 597, § 23, provides:

"SECTION 23. Sections 1 through 22 of this act shall be codified as a new chapter in Title 51, Mississippi Code of 1972."

On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

ATTORNEY GENERAL OPINIONS

A county utility authority may not force a municipal utility to execute a service agreement which provides that if the city does not comply with the authority's rules and regulations, the authority will take over the water and wastewater connections within the city under the Mississippi Gulf Coast Regional Utility Authority Act, Miss. Code Ann. § 49-17-701, et seq. Taylor, February 2, 2007, A.G. Op. #06-00675, 2007 Miss. AG LEXIS 10.

§ 51-39-3. Legislative findings and declarations.

The Legislature hereby finds and declares that:

(a) Storm water may contain contaminants which can degrade surface water quality;

(b) Due to the volume of water and the rate of flow, storm water runoff can pose a flood hazard to public and private property;

(c) The proper management of storm water is of concern to all citizens and is an activity thoroughly affecting the public interest;

(d) In certain areas of the state, the health, safety and welfare of the people of this state require efficient management of storm water;

(e) Federal regulations require portions of some local governments to develop and implement storm water management programs;

(f) There is a need for proper planning, design, construction, operation and maintenance of appropriate measures for the management of storm water; and

(g) There is a need to foster cooperation among local governments in addressing concerns resulting from storm water management, therefore it is necessary and desirable to authorize the creation of storm water management districts by counties and municipalities to plan for, design, acquire, construct, operate and maintain appropriate measures for management of storm water.

SOURCES: Laws, 2000, ch. 597, § 2, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation correcting an error in the second line of (c). The words "affected with the public" were changed to "affecting the public." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-5. Definitions.

Whenever used in this chapter, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Board" means the board of commissioners of a district.

(b) "Cost of project" means:

(i) All costs of site preparation and other start-up costs;

(ii) All costs of construction;

(iii) All costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, utility charges, permits, approvals, licenses, and certificates and the securing of any permits, approvals, licenses, and certificates and all machinery and equipment, including motor vehicles which are used for project functions;

(iv) All costs of engineering, geotechnical, architectural and legal services;

(v) All costs of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project;

(vi) Administrative expenses; and

(vii) Any other expenses as may be necessary or incidental to the project financing.

(c) "County" means any county of this state.

(d) "Designated representative" or "incorporator" means the person named by resolution of the governing body of a county or municipality as the representative of that unit of local government for the purpose of acting on their behalf as an incorporator in concert with other similarly named persons in the creation and incorporation of a storm water management district under this chapter.

(e) "District" means a storm water management district created under this chapter.

(f) "Ditch" means any branch or lateral drain, tile drain, levee, sluiceway, water course, floodgate, and any other construction work found necessary for the reclamation of wet and overflowed lands.

(g) "Facilities" mean any structure, building, ditch, pipe, channel, improvement, land, or other real or personal property used or useful in storm water management system under this chapter.

(h) "Governing body" means the elected or duly appointed officials constituting the governing body of a municipality or county.

(i) "Incorporation agreement" means that agreement between the designated representatives of various units of local government setting forth the formal creation of a storm water management district created under this chapter.

(j) "Member" means a unit of local government participating in a district.

(k) "Municipality" means any incorporated city, town or village in this state.

(*l*) "Project" means the collection, conveyance, retention, detention and any other portion of a storm water management system and any property, real or personal, used as or in connection with those purposes.

(m) "Public agency" means any municipality, county, political subdivision, governmental district or unit, public institution of higher learning, community college district, planning and development district, or any body politic and corporate or governmental agency created under the laws of the state.

(n) "State" means the State of Mississippi.

(o) "Storm water" means any flow occurring during or following any form of natural precipitation and resulting from that precipitation.

(p) "Storm water management system" means a system which is designed and constructed, implemented or operated to control storm water discharges to prevent or reduce flooding, over drainage or water pollution or to otherwise affect the quantity or quality of discharges from the system. The storm water management system includes all pipes, channels, ditches, streams, wetlands, detention or retention basins, ponds or other storm water conveyance or treatment facilities.

(q) "Unit of local government" means any county or municipality of the state.

SOURCES: Laws, 2000, ch. 597, § 3, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-7. Creation of storm water management district; resolution.

(1)(a) Any single unit of local government or any combination of units of local government may create a district.

(b) If any unit of local government is located within an existing district, then the unit of local government shall petition the district to provide a service or function needed by the petitioning unit, if the service or function is one which the district has the power and authority to perform. Upon receipt of the petition, the district shall have ninety (90) days within which to respond affirmatively to the petition, setting forth its intent to meet the need or perform the service or function and its plan to meet the need or perform the service or function. If the existing district does not affirmatively respond in a timely fashion, then the petitioning unit of local government may form a district as provided in this chapter.

(c) The district may include any geographic area within the boundaries of any interested unit of local government.

(d) A district may be formed although adequate water supply, flood control, drainage or other water or wastewater management activities are being undertaken by one or more of the units of local government interested in creating a district or by another public agency existing and operating within the geographical area of the district.

(2) Creation of a district shall be initiated by ordinance or resolution duly adopted by the governing body of each unit of local government. The ordinance

or resolution shall state: (a) the necessity for the proposed district; (b) the primary function of the proposed district; (c) the geographic boundaries of the proposed district within the jurisdiction of the unit of local government; (d) the names and geographic boundaries of any other units of local government proposing to be in the district; (e) the date upon which the governing body intends to create the district; (f) the estimated cost of projects to be conducted and maintained by the district; however the estimate shall not serve as a limitation upon the financing of any project or to invalidate any ordinance or resolution adopted under this section; (g) the name of a designated representative of the unit of local government to enter into an incorporation agreement with the other units of local government, if applicable; and (h) any other information reasonably necessary to inform the constituency of the unit of local government of the purpose and proposed obligations of the unit of local government and other units of local government, if applicable, proposing to create the district.

(3) The governing body of the unit of local government may hold a public meeting or public hearing on the necessity for creation of the district. The governing body shall provide notice in the manner provided under Section 51-39-9 of any public meeting or public hearing.

SOURCES: Laws, 2000, ch. 597, § 4, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-9. Publication of resolution; referendum on creation of district upon filing of protest.

(1) A certified copy of the adopted resolution or ordinance shall be published in a newspaper having a general circulation within the proposed district once a week for at least three (3) consecutive weeks before the date specified in the resolution or ordinance as the date upon which the governing body intends to create the district. The first publication of the notice shall be made not less than twenty-one (21) days before the date specified, and the last publication shall be made not more than seven (7) days before the date.

(2) If twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors within the geographic boundaries of the proposed district file a written petition with the governing body before the date specified in the resolution or ordinance under Section 51-39-7(2) protesting the creation of the district, the governing body shall call an election on the question of the creation of the district. The election shall be held and conducted by the election commissioners of the county or municipality as nearly as may be in accordance with the general laws governing elections. The election commissioners shall determine which of the qualified electors of the county or municipality reside within geographic boundaries of the proposed district, and only those qualified

electors as reside within the geographic boundaries of the proposed district shall be entitled to vote in the election. Notice of the election setting forth the time, place or places, and purpose of the election shall be published by the clerk of the board of supervisors or the municipal clerk, as the case may be. The notice shall be published for the time and in the manner provided in subsection (1) of this section. The ballot to be prepared for and used at the election shall be in substantially the following form:

"FOR CREATION OF ________ DISTRICT: ( )
AGAINST CREATION OF ________ DISTRICT: ( )"

Voters shall vote by placing a cross mark (x) or check mark (√) opposite their choice.

SOURCES: Laws, 2000, ch. 597, § 5, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-11. Adoption of resolution or ordinance authorizing district.

If no petition requiring an election is filed or if three-fifths (3/5) of those voting in the election provided in Section 51-39-9 vote in favor of the creation of the district, the governing body shall adopt a resolution or ordinance authorizing the creation of the district.

SOURCES: Laws, 2000, ch. 597, § 6, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-13. Payment of costs.

All costs incident to the publication of the notices, election and all other costs of meeting the requirements of this chapter shall be paid by the governing body.

SOURCES: Laws, 2000, ch. 597, § 7, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-15. Appeal of resolution or ordinance.

Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudication of the governing body may appeal to the circuit court of the county in the manner provided by law for appeals from orders of the board of supervisors or municipal authorities in Section 11-51-75. However, if no appeal is taken within fifteen (15) days after the date of the adoption of the resolution or ordinance in Section 51-39-11, the creation of the district within the jurisdiction of that unit of local government shall be final and shall not be subject to attack in any court after that time.

SOURCES: Laws, 2000, ch. 597, § 8, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-17. Incorporation of district; incorporation agreement; publication of notice of incorporation; filing of required documents; issuance of certificate of incorporation.

(1) Within thirty (30) days following the adoption of the final authorizing resolution or ordinance, the designated representatives shall proceed to incorporate a district by filing for record in the office of the chancery clerk of the participating counties and/or the clerk of participating municipalities, as the case may be, and the Secretary of State an incorporation agreement approved by each member. The agreement shall comply in form and substance with the requirements of this section and shall be executed in the manner provided in this chapter.

(2) The incorporation agreement of a district shall state:

(a) The name of each participating unit of local government and the date on which the governing bodies thereof adopted an authorizing resolution or ordinance;

(b) The name of the district which must include the words "________ Storm Water Management District," the blank spaces to be filled in with the name of one or more of the members or other geographically descriptive term. If the Secretary of State determines that the name is identical to the name of any other corporation organized under the laws of the state or so nearly similar as to lead to confusion and uncertainty, the incorporators may insert additional identifying words so as to eliminate any duplication or similarity;

(c) The period for the duration of the district;

(d) The location of the principal office of the district which shall be within the geographic boundaries of the district;

(e) That the district is organized under this chapter;

(f) The board setting forth the number of commissioners, terms of office and the vote of each commissioner;

(g) If the exercise by the district of any of its powers is to be in any way prohibited, limited or conditioned, a statement of the terms of that prohibition, limitation or condition;

(h) Any provisions relating to the vesting of title to its properties upon its dissolution which shall be vested in any member; and

(i) Any other related matters relating to the district that the incorporators may choose to insert and that are not inconsistent with this chapter or with the laws of the state.

(3) The incorporation agreement shall be signed and acknowledged by the incorporators before an officer authorized by the laws of the state to take acknowledgements. When the incorporation agreement is filed for record, there shall be attached to it a certified copy of the authorizing resolution or ordinance adopted by the governing body of each member.

(4) The incorporators shall publish a notice of incorporation once a week for three (3) consecutive weeks in a daily newspaper or newspapers having general circulation throughout the area to be served.

(5) Upon the filing for record of the agreement and the required documents, the district shall come into existence and shall constitute a public corporation under the name set forth in the incorporation agreement. The Secretary of State shall issue a certificate of incorporation to the district.

(6) Upon issuance of the certificate of incorporation, the district shall be a public body corporate and politic constituting a political subdivision of the state with the power of perpetual succession and shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions. The district shall be empowered in accordance with this chapter to promote the health, welfare and prosperity of the general public.

SOURCES: Laws, 2000, ch. 597, § 9, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second line of (1). The words "final authorizing resolution or ordinances" were changed to "final authorizing resolution or ordinance." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-19. Amendment of incorporation agreement; withdrawal of member from district.

(1) The incorporation agreement of any district may be amended in the manner provided in this section. The board of the district shall first adopt a

resolution proposing an amendment to the incorporation agreement. The amendment shall be set forth in full in the resolution and may include any matters which might have been included in the original incorporation agreement.

(2) After the adoption of the resolution by the board, the chairman of the board and the secretary of the district shall file a certified copy of the resolution and a signed written application in the name of and on behalf of the district, under its seal, with the governing body of each member, requesting the governing body to adopt a resolution approving the proposed amendment. As promptly as may be practicable after the filing of the application with the governing body, that governing body shall review the application and shall adopt a resolution or ordinance either denying the application or authorizing the proposed amendment. Any resolution or ordinance shall be published in a newspaper or newspapers as provided in Section 51-39-9. The governing body shall cause a copy of the application and all accompanying documents to be spread upon or otherwise made a part of the minutes of the meeting of the governing body at which final action upon the application is taken. The incorporation agreement may be amended only after the adoption of a resolution or ordinance by two-thirds (⅔) of the governing bodies of the members.

(3) Within thirty (30) days following the adoption of the last adopted resolution approving the proposed amendment, the chairman of the board and the secretary of the district shall sign, and file for record in the office of the chancery clerk and/or municipal clerk with which the incorporation agreement of the district was originally filed and the Secretary of State, a certificate in the name of and in behalf of the district, under its seal, reciting the adoption of the respective resolutions or ordinance by the board and by the governing body of each member and setting forth the amendment. The chancery clerk for the county and/or municipal clerk for the municipality shall record the certificate in an appropriate book in the clerk's office. When the certificate has been so filed and recorded, the amendment shall become effective. No incorporation agreement of a district shall be amended except in the manner provided in this section.

(4) Any member of a district may withdraw from the district by submitting a resolution to the board requesting an amendment to the incorporation agreement under subsection (1) of this section. Upon compliance with the requirements of subsections (1) through (3) of this section and payment of its pro rata share of any indebtedness, costs, expenses or obligations of the district outstanding at the time of withdrawal, the amendment may become effective upon adoption of a resolution by the board. The withdrawal of a member shall not operate to impair, invalidate, release or abrogate any contract, lien, bond, permit, indebtedness or obligation of the district, except to relieve the withdrawing member from further financial obligation to the district.

(5) Any party having an interest in the subject matter and aggrieved by an action of a governing body under subsections (2) and (4) of this section, may appeal that action in the manner and within the time limitations provided in Section 51-39-15.

SOURCES: Laws, 2000, ch. 597, § 10, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-21. Board of commissioners.

(1) All powers of the district shall be vested in the board of commissioners.

(2) If the district is composed of a single member, the governing body of that county or municipality shall serve as the board of commissioners of the district and shall exercise those powers and duties granted to the board under this chapter.

(3) If the district is composed of two (2) or more members, each member of the district shall have at least one (1) commissioner on the board. The board shall contain an odd number of commissioners:

(a) The incorporators shall, in the incorporation agreement, designate the vote of each commissioner based upon pro rata population or any other criteria as the incorporators may determine. In the alternative, the incorporators, in the incorporation agreement, may authorize appointments to the board by the members to reflect population, or any other criteria as the incorporators may determine. Within thirty (30) days after the effective date of the incorporation agreement, the governing body of each member shall appoint a commissioner or commissioners to the board as determined by the incorporation agreement. All vacancies shall be filled by appointment in the same manner as the original appointment.

(b) Each commissioner shall serve at the will and pleasure of the appointing governing body and for any term established by the appointing governing body.

(c) The governing body of each member shall appoint a commissioner or commissioners from among the elected officials serving on the governing body of the respective county or municipality.

(4) The board of commissioners shall annually elect a chairman and a vice chairman. The chairman shall preside at all meetings of the board and act as the chief executive officer of the board and of the district, unless otherwise determined by the board. The vice chairman shall act in the absence or disability of the chairman. A majority of the membership of the board shall constitute a quorum. Except as otherwise provided by law, all official acts of the board shall require an affirmative vote by a majority of those commissioners present and voting.

(5) The number of commissioners on the board shall be increased by at least one (1), as provided in an amended incorporation agreement, each time a county or municipality enters into membership. The board shall establish the vote or number of commissioners based upon the same terms as the original incorporation agreement. Within fifteen (15) days after becoming a member,

the governing body of the new member shall appoint a commissioner or commissioners to the board.

(6) If the district is composed of three (3) or more members, the board may appoint an executive committee to be composed of not less than three (3) persons. No member shall have more than one (1) representative on the executive committee. The chairman of the board shall serve as chairman of the executive committee. The executive committee may execute all powers vested in the full board between meetings of the board. A majority shall constitute a quorum for the transaction of business. All actions of the executive committee must be ratified by a majority of the board at a regular or called meeting of the board.

(7)(a) The board may employ any personnel and appoint and prescribe the duties of any officers as the board deems necessary or advisable, including a general manager and a secretary of the district. The board may require any of its employees to be bonded. The cost of any bond required by this section or by the board shall be paid from funds of the district.

(b) The general manager may also serve as secretary and shall be a person of good moral character and of proven ability as an administrator with a minimum of five (5) years' experience in the management and administration of a public works operation or comparable experience which may include, but is not limited to, supervision, public financing, regulatory codes and related functions as minimum qualifications to administer the programs and duties of the district. The general manager shall administer, manage and direct the affairs and business of the district, subject to the policies, control and direction of the board. The general manager shall give bond executed by a surety company or companies authorized to do business in this state in the penal sum of Fifty Thousand Dollars ($50,000.00) payable to the district conditioned upon the faithful performance of that person's duties and the proper accounting for all funds.

(c) The secretary shall keep a record of the proceedings of the board and the district and shall be custodian of all books, documents and papers filed with the district, the minute book or journal and the official seal. The secretary may make copies of all minutes and other records and documents of the district and to certify under the seal of the district that the copies are true and accurate copies, and all persons dealing with the district may rely upon those certificates.

(8) Regular meetings of the board shall be held as set forth in its rules or regulations for management of the district's business and affairs. Additional meetings of the board shall be held at the call of the chairman or whenever a majority of commissioners so request.

(9) Upon express and prior authorization by the board, each commissioner may receive reimbursement for actual and necessary expenses incurred for attending each day's meeting of the board and for each day spent in attending to the business of the district as provided by Section 25-3-41. Each commissioner shall not be entitled to per diem or any additional compensation other than that specifically provided for in this subsection.

(10) The board shall prepare a budget for the district for each fiscal year at least ninety (90) days before the beginning of that fiscal year. The fiscal year shall be from July 1 to June 30 of each year. The board shall submit the budget to the governing body of each member.

SOURCES: Laws, 2000, ch. 597, § 11, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-23. Board authorized to contract with members to provide support services.

The board may contract with any member to provide support services. Any member may contract with or as part of their service contract with the district to provide any staff support, administrative and operational services as it deems advisable and on any terms as may be mutually agreed.

SOURCES: Laws, 2000, ch. 597, § 12, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-25. Rights and powers of district.

The district shall have all the rights and powers necessary or convenient to carry out the purposes of this chapter, including, but not limited to, the following:

(a) To sue and be sued in its own name;

(b) To adopt an official seal and alter the seal at its pleasure;

(c) To maintain an office or offices at any place or places within the geographic boundaries of its members as it may determine;

(d) To acquire, construct, improve, or modify, to operate or cause to be operated and maintained, either as owner of all or of any part in common with others, a storm water management system within the counties or municipalities in the district. The district may pay all or part of the cost of any storm water management system from any contribution by persons, firms, public agencies or corporations. The district may receive, accept, and use all funds, public or private and pay all cost of development, implementation and maintenance as may be determined as necessary for any project;

(e) To acquire, in its own name, by purchase on any terms and conditions and in any manner as it may deem proper, except by eminent domain, property for public use, or by gift, grant, lease, or otherwise, real property or easements therein, franchises and personal property necessary or convenient for its corporate purposes. These purposes shall include, but are not limited to, the constructing or acquiring of a storm water management system; the improving, extending, reconstructing, renovating, or remodeling of any existing storm water management system or part thereof; or the demolition to make room for any project or any part thereof. The district may insure the storm water management system against all risks as any insurance may, from time to time, be available. The district may also use any property and rent or lease any property to or from others, including public agencies, or make contracts for the use of the property. The district may sell, lease, exchange, transfer, assign, pledge, mortgage or grant a security interest for any property. The powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in that property, whether divided or undivided. Title to any property of the district shall be held by the district exclusively for the benefit of the public;

(f) To adopt, modify, repeal and promulgate rules and regulations implementing or effectuating the powers and duties of the district under any statute within the district's jurisdiction, and where otherwise not prohibited by federal or state law, to make exceptions to and grant variances and exemptions from, and to enforce those rules and regulations. Those rules and regulations may include, but shall not be limited to, rules and regulations for (i) the management of the district's business and affairs; (ii) the use, operation, maintenance or implementation of the district's storm water management system or any portion of that system, facility or any other property owned or operated by the district; and (iii) specifications and standards relating to the planning, design or construction of the storm water management system or any facility owned or operated by the district;

(g) To enter into contracts or leases with any person or public agency and to execute all instruments necessary or convenient for construction, operation, and maintenance of the storm water management system and leases of projects. Without limiting the generality of the above, authority is specifically granted to units of local government and to the district to enter into contracts, lease agreements, or other undertaking relative to the furnishing of storm water management system services or facilities or both by the district to a unit of local government and by a unit of local government to the district;

(h) To exercise any powers, rights, or privileges conferred by this chapter either alone or jointly or in common with any other public or private parties. In any exercise of any powers, rights, and privileges jointly or in common with others for the construction, operation, and maintenance of facilities, the district may own an undivided interest in any facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this chapter and may enter into any agreement with respect to any facility with any other party participating in those facilities. An agreement may contain any terms, conditions, and provisions, consistent with this section, as the parties to the agreement shall deem to be in their best interest, including, but not limited to, provisions for the planning, design, construction, operation, implementation and maintenance of any facility by any party to an agreement. Any party or parties shall be designated in or under any agreement as agent or agents on behalf of itself and one or more of the other parties to the agreement, or by any other means as may be determined by the parties. The agreement shall include a method or methods of determining and allocating, among the parties, costs of planning, design, construction, operation, maintenance, renewals, replacements, improvements, and disposal related to any facility. In carrying out its functions and activities as an agent with respect to planning, design, construction, operation, and maintenance of any facility, the agent shall be governed by the laws and regulations applicable to that agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. The agent shall act for the benefit of the public. In any agreement, the district may delegate its powers and duties related to the planning, design, construction, operation, and maintenance of any facility to the party acting as agent and all actions taken by that agent in accordance with the agreement may be binding upon the district without further action or approval of the district;

(i) To apply, contract for, accept, receive and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, authority, or instrumentality of any of the foregoing, upon any terms and conditions as the United States, the state, a unit of local government, or any agency, department, authority, or instrumentality shall impose. The district may administer trusts. The district may sell, lease, transfer, convey, appropriate and pledge any and all of its property and assets;

(j) To employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting and other professional services;

(k) To assume or continue any contractual or other business relationships entered into by the municipalities or counties who are members of the district, including the rights to receive and acquire transferred rights under option to purchase agreements;

(*l*) To enter on public or private lands, waters, or premises for the purpose of making surveys, borings or soundings, or conducting tests, examinations or inspections for the purposes of the district, subject to responsibility for any damage done to property entered;

(m) To do and perform any acts and things authorized by this chapter under, through or by means of its officers, agents and employees, or by contracts with any person; and

(n) To do and perform any and all acts or things necessary, convenient or desirable for the purposes of the district, or to carry out any power expressly granted in this chapter.

SOURCES: Laws, 2000, ch. 597, § 13, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the first paragraph. The word "of" was inserted after "purposes." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-27. Regulations and best management practices.

(1) Any regulations or best management practices adopted by the board under this chapter, shall be no more stringent or extensive in scope, coverage or effect than the regulations and best management practices promulgated or recommended by the United States Environmental Protection Agency.

(2) If federal regulations or recommended best management practices do not address any matter relating to a storm water management system, the board may adopt or promulgate appropriate regulations or best management practices to address those matters.

SOURCES: Laws, 2000, ch. 597, § 14, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-29. Power of eminent domain.

The governing body of a member may exercise the power of eminent domain, upon written request of the board of commissioners, for the particular purpose of the acquisition of property for the district's storm water management system. The power of eminent domain shall be exercised as provided in Chapter 27, Title 11, Mississippi Code of 1972.

SOURCES: Laws, 2000, ch. 597, § 15, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

Cross References — Eminent domain, generally, see § 11-27-1 et seq.

§ 51-39-31. Public agencies authorized to contract with district for facilities and services.

(1) Any public agency may, in accordance with a duly adopted resolution or ordinance, contract with the district for the district to acquire, construct or provide facilities and projects to be owned by the district for furnishing storm water management and related services to the public agency or to users within the boundaries of the public agency. The public agency shall be obligated to make payments which shall be sufficient to enable the district to meet its expenses, and payments into funds for operation, maintenance and renewals and replacements. The contracts may also contain other terms and conditions as the district and the public agency may determine. Any contract may be for a term covering the life of the facilities or for any other term or for an indefinite period.

(2) Contracts may provide for payments in the form of contributions to defray the cost of any purpose set forth in the contracts and as advances for any facilities subject to repayment by the district. A public agency may make those contributions or advances from its general fund, general obligation bond proceeds, or surplus fund or from any monies legally available therefor. The entering into of any contract under this section shall not constitute the incurring of a debt by a public agency within the meaning of any constitutional or statutory limitations on debts of the state or units of local government.

SOURCES: Laws, 2000, ch. 597, § 16, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-33. Storm water management plan.

The district may at the direction of the governing bodies of the participating units of local government submit a storm water management plan as required state or federal environmental rules and regulations. The district may also provide services and facilities for implementation of the storm water management plan.

SOURCES: Laws, 2000, ch. 597, § 17, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-35. Authority of public agencies to assist in attaining objectives of this chapter.

For the purpose of attaining the objectives of this chapter, any public agency may, upon any terms as it may determine, do any of the following:

(1) Lend, contribute, or donate money to any district or perform services for the benefit of the district;

(2) Donate, sell, convey, transfer, lease or grant to any district, without the necessity of authorization at any election of qualified voters, any property of any kind, where otherwise not prohibited by law; and

(3) Do any thing, whether or not specifically authorized in this section, not otherwise prohibited by law, that is necessary or convenient to aid and cooperate with any district in attaining the objectives of this chapter.

SOURCES: Laws, 2000, ch. 597, § 18, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-37. Property and revenue of district exempt from taxation.

The property and revenue of the district shall be exempt from all state, county and municipal taxation.

SOURCES: Laws, 2000, ch. 597, § 19, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-39. Filing of financial reports.

Within ninety (90) days after the close of each fiscal year, the board of commissioners shall publish in a newspaper of general circulation in the county a sworn statement showing the financial condition of the district. The statement shall also be filed with the governing body of each member of the district.

SOURCES: Laws, 2000, ch. 597, § 20, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-41. District not authorized to deny access to system to person holding appropriate permits.

This chapter shall not be construed to authorize a district to deny access to the storm water management system or any portion of that system to any person holding a valid water pollution control permit or coverage under a general permit from the Environmental Quality Permit Board.

SOURCES: Laws, 2000, ch. 597, § 21, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

§ 51-39-43. Chapter constitutes full and complete authority for creation of district.

This chapter, without reference to any other statute, shall be deemed to be full and complete authority for the creation of a district. No proceedings shall be required for the creation of a district other than those provided for and required in this chapter. All the necessary powers to be exercised by the governing body of a county or municipality and by the board of commissioners of any district, in order to carry out this chapter, are hereby conferred.

SOURCES: Laws, 2000, ch. 597, § 22, eff from and after August 21, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

Editor's Note — On August 21, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 597.

CHAPTER 41

Public Water Authorities

Sec.
51-41-1. Legislative intent.
51-41-3. Definitions.
51-41-5. Construction.
51-41-7. Authority generally.
51-41-9. Authority and procedure to incorporate.
51-41-11. Existence of water authority.
51-41-13. Board of directors.
51-41-15. Officers.
51-41-17. Powers generally.
51-41-19. Tax exemption of projects.
51-41-21. Issuance of bonds.
51-41-23. Execution of bonds.
51-41-25. Security for bonds.
51-41-27. Bonds — tax exemption.
51-41-29. Proceeds from issuance of bonds.
51-41-31. Refunding bonds.
51-41-33. Act is full authority.

§ 51-41-1. Legislative intent.

It is the intent of the Legislature to provide a means, in addition to the incorporation of districts authorized in Sections 19-5-151 through 19-5-207, by which not-for-profit corporations or associations involved in the sale, transmission and distribution of potable water to members of the public and others may convert their entity status from that of a body corporate to that of a body politic, thereby allowing those entities the opportunity to access the tax-exempt capital markets and thereby assuring the State of Mississippi and the customers of those entities of adequate supplies of water at the lowest water rates possible.

SOURCES: Laws, 2003, ch. 512, § 1, eff from and after July 1, 2003.

Cross References — Water districts, etc., see § 19-5-151 et seq.

Regulation of public utilities, see § 77-3-1 et seq.

Procedure for sale, assignment, lease or transfer of certificate for public utility, see § 77-3-23.

§ 51-41-3. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Board" means the board of directors of the water authority;

(b) "Bond" means any bond, promissory note, lease purchase agreement or other evidence of indebtedness of any nature along with all debt securing instruments of every nature related thereto;

(c) "Indenture" means a mortgage, an indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement or trust indenture executed by the water authority as security for any bonds;

(d) "Project" means any raw or potable water or wastewater intake, treatment, distribution, transmission, storage, pumping, well site, well field or other facility or system, or any combination of the foregoing, that has as its purpose the providing of raw or potable water to members of the public and commercial, industrial or other users or the treatment of wastewater, along with any and all other appurtenances, equipment, betterments or improvements related thereto. The above projects may include any lands, or interest in any lands, deemed by the board to be desirable in connection with the projects, and necessary equipment for the proper functioning and operation of the buildings or facilities involved;

(e) "Qualified corporation" means any not-for-profit corporation or association that provides, distributes, transmits, treats, pumps or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial and other users;

(f) "United States" means the United States of America or any of its agencies or instrumentalities;

(g) "State" means the State of Mississippi; and

(h) "Water authority" means that body politic and governmental entity organized under the provisions of this chapter.

SOURCES: Laws, 2003, ch. 512, § 2, eff from and after July 1, 2003.

§ 51-41-5. Construction.

This chapter shall be liberally construed in conformity with its intent. All acts and activities of the water authority performed under the authority of this chapter are legislatively determined and declared to be essential governmental functions.

SOURCES: Laws, 2003, ch. 512, § 3, eff from and after July 1, 2003.

§ 51-41-7. Authority generally.

There is conferred upon a water authority, the authority to take such action and to do, or cause to be done, such things as are necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import of this chapter.

SOURCES: Laws, 2003, ch. 512, § 4, eff from and after July 1, 2003.

§ 51-41-9. Authority and procedure to incorporate.

(1) Whenever a qualified corporation desires to convert into and become reconstituted and reincorporated as a water authority under this chapter, the qualified corporation shall present to and file with the Secretary of State:

(a) Its resolution duly adopted by the board of directors of the qualified corporation that evidences the desire of the qualified corporation to convert into and become reconstituted and reincorporated as a water authority and that also certifies that the qualified corporation:

(i) Was initially formed as a not-for-profit corporation or association; and

(ii) Desires to operate as a public body authorized under the laws of Mississippi as a result of its conversion and reconstitution as a water authority under this chapter;

(b) Its application for reconstitution and certificate of incorporation, which shall state and include the following information:

(i) The name of the water authority, which shall be "The ________ Public Water Authority of the State of Mississippi," or some other name of similar import, it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the Secretary of State;

(ii) The location of the water authority's principal office, and the number of directors of the water authority, which shall be subject to change and modification as provided in the water authority's bylaws;

(iii) The names and addresses of the initial board of directors of the water authority;

(iv) The name and address of the agent for service of process of the water authority; and

(v) Any other matters that the initial board of directors of the water authority may deem necessary and appropriate;

(c) A copy of the water authority's bylaws along with any other information that the initial board of directors of the water authority may deem necessary and appropriate;

(d) A statement and certification from the Secretary of State that the proposed name of the water authority is not identical with that of any other water authority in the state, or so nearly similar thereto as to lead to confusion and uncertainty; and

(e) A reasonable filing and review fee that the Secretary of State may designate and determine from time to time, which shall not be in excess of the filing fee charged in connection with the receipt and filing of a corporation's articles of incorporation.

(2) Two (2) or more qualified corporations may jointly convert into and become reconstituted and reincorporated as one (1) water authority under the same procedure as specified for one (1) qualified corporation under this chapter.

SOURCES: Laws, 2003, ch. 512, § 5, eff from and after July 1, 2003.

§ 51-41-11. Existence of water authority.

The application for reconstitution and certificate of incorporation shall be signed and acknowledged by a majority of the board of directors of the qualified corporation. When the application for reconstitution and certificate of incorporation and other required documents have been so filed with and accepted by the Secretary of State, as evidenced by the issuance by the Secretary of State of its certificate of existence in a form that the Secretary of State may deem appropriate, the water authority referred to in the application shall come into existence and shall constitute a body corporate and politic in perpetuity with power of perpetual succession and a political subdivision of the state under the name set forth in the application, and the water authority shall be vested with the rights and powers granted in this chapter and any other applicable laws. At the same time, the qualified corporation shall cease to exist and all assets and liabilities of every nature, including without limitation, all real property, personal property, certificate of public necessity and convenience, contractual obligations, lending obligations outstanding, rights afforded borrowers of federal and state funds and other tangible and intangible assets and liabilities of every nature shall, without need for further action or approval by any third party, be vested in and shall accrue to the benefit of the water authority. The water authority shall then send notice of transfer of said certificate to the Mississippi Public Service Commission.

SOURCES: Laws, 2003, ch. 512, § 6, eff from and after July 1, 2003.

§ 51-41-13. Board of directors.

(1) The water authority shall have a board of directors composed of the number of directors provided in the application for reconstitution and certificate of incorporation, which shall not be fewer than five (5) directors. All powers of the water authority shall be exercised by the board or under its authorization.

(2) The directors shall be elected and determined, and shall serve in accordance with those procedures that the water authority may specify in its bylaws; provided, however, that each water or sewer user served by the water authority shall be entitled to vote on the election of directors of the water authority. The water authority's bylaws shall contain provisions and procedures for the election and appointment of its directors that are identical in nature to those same provisions and procedures as contained in the qualified corporation's bylaws, unless otherwise amended by the water authority or required by state law. A water authority shall promptly file a copy of any amendments to its bylaws with the Secretary of State. A water authority also may promulgate rules and regulations, not inconsistent with state law, containing provisions and procedures for the election and appointment of its directors.

(3) Each director shall take and subscribe to the oath of office prescribed in Section 268, Mississippi Constitution of 1890, that he will faithfully discharge the duties of the office of director, which oath shall be maintained on file by the water authority. Before entering upon the discharge of the duties of his office, each director shall be required to execute a bond payable to the State

of Mississippi in the penal sum of Ten Thousand Dollars ($10,000.00), conditioned that he will faithfully discharge the duties of his office.

(4) A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and duties of the water authority. A director shall continue in office until the director's successor is properly elected and accepts office.

(5) The members of the board and the officers of the water authority shall serve without compensation, except that they may be reimbursed for actual expenses incurred in and about the performance of their duties.

(6) All meetings and records of the water authority shall be subject to the Mississippi Open Meetings Act and the Mississippi Public Records Act.

(7) All proceedings of the board shall be reduced to writing by the secretary of the water authority and appropriately recorded and maintained in a well bound book.

SOURCES: Laws, 2003, ch. 512, § 7, eff from and after July 1, 2003.

§ 51-41-15. Officers.

The officers of the water authority shall consist of a chairman, vice chairman, a secretary, a treasurer, and such other officers as the board deems necessary to accomplish the purposes for which the water authority was organized. All officers of the water authority shall be persons who receive water service from the water authority. The offices of secretary and treasurer may, but need not, be held by the same person. The treasurer or secretary-treasurer shall be required to execute a bond payable to the water authority, in a sum and with such security as fixed and approved by the board. All officers of the water authority shall be elected by the board and shall serve for those terms of office as specified in the bylaws.

SOURCES: Laws, 2003, ch. 512, § 8, eff from and after July 1, 2003.

§ 51-41-17. Powers generally.

The water authority shall have the following powers, acting either individually or jointly with other water authorities or public entities, together with all powers incidental thereto or necessary to the discharge thereof:

(a) To have succession in its designated name;

(b) To sue and be sued and to prosecute and defend suits in any court having jurisdiction of the subject matter and of the parties;

(c) To make use of a seal and to alter it at pleasure;

(d) To adopt and alter bylaws for the regulations and conduct of its affairs and business;

(e) To acquire, whether by purchase, gift, lease, devise, or otherwise, property of every description which the board may deem necessary to the acquisition, construction, equipment, improvement, enlargement, operation, administration or maintenance of a project, and to hold title thereto;

(f) To construct, enlarge, equip, improve, maintain, consolidate, administer and operate one or more projects;

(g) To borrow money, including interim construction financing, for any of its purposes;

(h) To sell and issue its bonds;

(i) To sell and issue refunding bonds;

(j) To secure any of its bonds by pledge and indenture as provided in this chapter;

(k) To appoint, employ and compensate such general managers, executive directors, agents, architects, engineers, attorneys, accountants and other persons and employees as the business of the water authority may require;

(*l*) To provide for such insurance as the board may deem advisable;

(m) To invest in obligations that are direct or guaranteed obligations of the United States of America, or other securities in which public funds may be invested by any other political subdivision under the laws of this state, any of its funds that the board may determine are not presently needed for its operational purposes;

(n) To contract, lease and make lease agreements respecting its properties or any part thereof;

(o) To exercise the power of eminent domain in accordance with the procedures prescribed by Title 11, Chapter 27, Mississippi Code of 1972;

(p) To sell, convey or otherwise dispose of any of its properties or projects; and

(q) To exercise and hold the authority and power granted to water supply systems and sewer systems under Sections 19-5-173, 19-5-175, 19-5-177 and 19-5-203.

SOURCES: Laws, 2003, ch. 512, § 9, eff from and after July 1, 2003.

§ 51-41-19. Tax exemption of projects.

Each project, all the water authority's interest therein, and all income from the project, is determined and declared by the Legislature to be public property used exclusively for a public purpose and shall be exempt from ad valorem taxation by all taxing authorities.

SOURCES: Laws, 2003, ch. 512, § 10, eff from and after July 1, 2003.

§ 51-41-21. Issuance of bonds.

(1) The water authority is authorized at any time, and from time to time, to issue its bonds for the purpose of acquiring, constructing, improving, enlarging, completing and equipping one or more projects.

(2) Before the water authority's proposed issuance of bonds, the water authority shall publish one (1) time in a newspaper of general circulation in the affected county or counties, notice of the proposed issuance of bonds, the approximate principal amount of bonds contemplated to be sold, a general

description of the project contemplated to be constructed with bond proceeds and the date of a public meeting at which members of the public may obtain further information regarding the sale of the bonds and the development of the project. The notice shall be published at least ten (10) days before the date of the hearing. The water authority chairman, or his or her designee, shall be responsible for conducting the hearing and shall require all public comments that might pertain to the proposed issuance of bonds by the water authority. Upon compliance with the provisions of this section, no other notice, hearing or approval by any other entity or governmental unit shall be required as a condition to the issuance by the water authority of its contemplated bonds.

(3) The principal of, and the interest, if any, on any bonds shall be payable out of the revenues derived from the projects with respect to which the bonds are issued, or from any other source available to the water authority.

(4) None of the bonds of the water authority shall ever constitute an obligation or debt of the state, the municipality or county in which the water authority operates, the Secretary of State, or any officer or director of the water authority, or a charge against the credit or taxing powers of the state.

(5) As the water authority determines, bonds of the water authority may:

(a) Be issued at any time and from time to time;

(b) Be in such form and denominations;

(c) Have such date or dates;

(d) Mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years after the date of issuance;

(e) Bear interest, if applicable, payable at such times and such rate or rates as may be established by the board;

(f) Be payable at such place or places within or without the State of Mississippi;

(g) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and

(h) Contain such other terms and provisions as may be appropriate or necessary in the discretion of the water authority.

(6) Bonds of the water authority may be sold at either public or private sale in such manner, and from time to time, as may be determined by the board to be most advantageous. The water authority may pay all expenses, premiums and commissions that the board may deem necessary or advantageous in connection with the authorization, sale and issuance of its bonds.

(7) All bonds shall contain a recital that they are issued under the provisions of this chapter, which recital shall be conclusive that they have been duly authorized under the provisions of this chapter.

(8) All bonds issued under the provisions of this chapter shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state and shall be in registered form.

(9) All bonds issued by a water authority may be validated upon the direction of the board under Sections 31-13-1 through 31-13-11. The validation hearing shall be held in the county in which the principal office of the water authority is located.

SOURCES: Laws, 2003, ch. 512, § 11, eff from and after July 1, 2003.

§ 51-41-23. Execution of bonds.

Bonds shall be executed by the manual or facsimile signature of the chairman of the water authority and by manual or facsimile signature of the secretary of the water authority. In case any of the officers whose signatures appear on the bonds cease to be that officer before the delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the water authority.

SOURCES: Laws, 2003, ch. 512, § 12, eff from and after July 1, 2003.

§ 51-41-25. Security for bonds.

(1) The principal of, and interest, if any, on the bonds, may be secured by a pledge of the revenues of the water authority of that project financed by the water authority through its issuance of bonds, or from any other source that the water authority may deem necessary and appropriate, and may be secured by the creation of a mortgage and security interest encumbering the real property of the water authority, or security interest in all personal property and revenues of the water authority as set forth in the indenture.

(2) The trustee under any indenture may be a trust company or bank having trust powers, whether located within or without the state.

(3) The indenture may contain any agreements and provisions customarily contained in instruments securing evidences of indebtedness including, without limiting, the generality of the foregoing provisions respecting the nature and extent of the security; the collection, segregation and application of the revenues generated from the operation of any project covered by the indenture; covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient revenue to maintain income at required levels; the maintenance and insurance of the project; the creation and maintenance of reserve and other special funds; and the rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture, all as the board shall deem advisable and as shall not be in conflict with the provisions of this chapter.

(4) If there is any default by the water authority in payment of the principal of, or the interest, if any, on the bonds or in any of the agreements on the part of the water authority that may properly be included in any indenture securing the bonds, the bondholders or the trustee under any indenture, as authorized in the indenture, may either in law or in equity, by suit, action, mandamus, or other proceeding, enforce payment of the principal or interest, if any, and compel performance of all duties of the board and officers of the water authority, and shall be entitled as a matter of right and regardless of the sufficiency of any such security to the appointment of a receiver in equity with all the powers of that receiver for the operation and maintenance of the project

covered by the indenture and the collection, segregation, and applications of income and revenues from the project.

(5) The indenture may contain provisions regarding the rights and remedies of any trustee under the indenture and the holders of the bonds and the coupons and restricting the individual rights of action of the holders of the bonds and coupons.

(6) There is created a statutory lien in the nature of a mortgage lien upon any project, system or systems acquired or constructed with proceeds of bonds issued by a water authority under this chapter, including all extensions and improvements thereof or combinations thereof subsequently made, the lien shall be in favor of the holder or holders of any bonds issued under this chapter, and all that property shall remain subject to the statutory lien until the payment in full of the principal of and interest, if any, on the bonds. Any holder of the bonds or any of the coupons representing interest on the bonds may, either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction, protect and enforce the statutory lien and compel the performance of all duties required by this chapter, including the making and collection of sufficient rates for the service or services, the proper accounting thereof, and the performance of any duties required by covenants with the holders of any bonds issued under this chapter.

If any default is made in the payment of the principal of or interest, if any, on the bonds, any court having jurisdiction of the action may appoint a receiver to administer the water authority and the project, system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against project, system or systems, and for payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of this chapter and any covenants with bondholders.

SOURCES: Laws, 2003, ch. 512, § 13, eff from and after July 1, 2003.

§ 51-41-27. Bonds — tax exemption.

The principal of and interest, if any, on bonds issued under the authority of this chapter shall be exempt from all state, county and municipal taxes. This exemption shall include income, inheritance and estate taxes.

SOURCES: Laws, 2003, ch. 512, § 14, eff from and after July 1, 2003.

§ 51-41-29. Proceeds from issuance of bonds.

(1) The proceeds derived from all of the bonds, other than refunding bonds, may be used only to pay the costs of acquiring, constructing, improving, enlarging and equipping the project with respect to which they were issued, as may be specified in the proceedings in which the bonds are authorized to be issued and all costs incidental thereto, including without limitation:

(a) The costs of any land forming a part of the project and all easements that may pertain to or be associated with any project;

(b) The costs of the labor, materials and supplies used in any construction, improvement and enlargement, including architect's and engineer's fees and the cost of preparing contract documents and advertising for bids along with all other reasonable and necessary project cost;

(c) The purchase price of and the cost of installing equipment for the project;

(d) Legal, fiscal, accounting and recording fees and expenses incurred in connection with the authorization, sale and issuance of the bonds issued in connection with the project;

(e) Interest, if any, on bonds for a reasonable period before, during and after the time required for completion of the project;

(f) The amount necessary to fund a debt service reserve in an amount deemed appropriate by the water authority;

(g) Cost associated with the obtaining of default insurance ratings and other credit enhancements of every nature; and

(h) Other operational expenses, reserves and other accounts of every nature.

(2) If any of the proceeds derived from the issuance of bonds remains undisbursed after completion of the project and the making of all such expenditures, the balance shall be used for the redemption of bonds of the same issue.

SOURCES: Laws, 2003, ch. 512, § 15, eff from and after July 1, 2003.

§ 51-41-31. Refunding bonds.

(1) The water authority may at any time, and from time to time, issue refunding bonds for the purpose of refunding the principal of and interest, if any, on any bonds of the water authority previously issued under this chapter and then outstanding, whether or not the principal and interest have matured at the time of the refunding under this chapter, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.

(2) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued.

(3) Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit, with the right to invest monies in the escrow deposit until needed for the redemption or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby. However, the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange before the date on which they may be paid or redeemed by the water authority under their respective provisions.

(4) Any refunding bonds of the water authority shall be payable solely from the revenues out of which the bonds to be refunded were payable or from those other sources or other revenues that might be identified in the indenture.

(5) All provisions of this chapter pertaining to bonds of the water authority that are not inconsistent with the provisions of this section shall, to the extent applicable, also apply to refunding bonds issued by the water authority.

SOURCES: Laws, 2003, ch. 512, § 16, eff from and after July 1, 2003.

§ 51-41-33. Act is full authority.

This chapter shall be deemed to be full and complete authority for the creation of water authorities and the issuance of bonds as set forth in this chapter. No proceedings shall be required for the creation of water authorities or the issuance of bonds other than those provided for and required in this chapter. The board of directors of a water authority shall have all the powers necessary in order to carry out the provisions of this chapter.

SOURCES: Laws, 2003, ch. 512, § 17, eff from and after July 1, 2003.

authority.

[illegible]

(e) The [illegible] and [illegible]

HISTORY: Laws, 2003, ch. 312, § 8, eff from and after July 1, [illegible]

(f) Legal, fiscal, accounting and recording [illegible] incident to the authorization, [illegible]

§ 51-[illegible]

This chapter shall be deemed to be full and complete authority for the creation of water authorities and the issuance of bonds as set forth in this chapter. No proceedings shall be required for the creation of water authorities [illegible] other than those provided for and required in this [illegible] water authority shall have all the powers [illegible] this chapter [illegible]

[illegible] the proceeds derived from the issuance of bonds [illegible] completion of the project and the making of all [illegible], the balance shall be used for the redemption of bonds of the [illegible]

HISTORY: Laws 2003, ch. 312, § [illegible], eff from and after July 1, 2003.

§ [illegible]. Refunding bonds.

(1) The water authority may, at any time, and from time to time, issue refunding bonds for the purpose of refunding the principal of and interest on any bonds of the water authority previously issued under this chapter and then outstanding, whether or not the principal and interest have matured at the time of the refunding under this chapter, and for the payment of expenses incurred in connection with the refunding and any premium [illegible] to be paid in order to redeem or retire the bonds to be refunded.

(2) The proceeds derived from the sale of any refunding bonds [illegible] used only for the purposes for which the refunding bonds were authorized.

(3) Any [illegible] refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit, with the right to invest moneys in the escrow deposit [illegible] to the redemption or by exchange of the refunding bonds for the bonds [illegible] to be refunded thereby. However, the holders of any [illegible] shall not be compelled without their consent to surrender their bonds for payment or exchange [illegible] may be [illegible] by the water authority under their terms or conditions.

(4) Any refunding bonds of the [illegible] from [illegible] (which [illegible] from other [illegible] or combination [illegible]

TITLE 53

OIL, GAS, AND OTHER MINERALS

Chapter 1. State Oil and Gas Board 53-1-1
Chapter 3. Development, Production and Distribution of Gas and Oil ... 53-3-1
Chapter 5. Geological and Mineral Survey 53-5-1
Chapter 7. Surface Mining and Reclamation of Land 53-7-1
Chapter 9. Surface Coal Mining and Reclamation of Land 53-9-1
Chapter 10. Interstate Mining Compact 53-10-1
Chapter 11. Mississippi Geologic Sequestration of Carbon Dioxide Act ... 53-11-1

CHAPTER 1

State Oil and Gas Board

In General 53-1-1
Administration Expense Tax 53-1-71
Contributions to Interstate Oil Compact Commission 53-1-101
Provision for Repeal of Chapter. [Repealed]

IN GENERAL

Sec.
53-1-1. Declaration of policy.
53-1-3. Definitions.
53-1-5. Board created.
53-1-7. State supervisor; funding of agency expenses; deposit of monies into State General Fund.
53-1-9. Employees.
53-1-11. Attorney for board.
53-1-13. Board; employee eligibility.
53-1-15. Expenses.
53-1-17. Powers of board.
53-1-19. Rules of procedure before board to be consistent with Title 25, Chapter 43; recording and preservation of proceedings.
53-1-21. Public hearing.
53-1-23. Emergency rules, regulations, or orders.
53-1-25. Notice and service of process.
53-1-27. Record of rules, regulations and orders.
53-1-29. Request for hearing.
53-1-31. Records; inspection by public.
53-1-33. Supervisor and his representatives to have access to all wells.
53-1-35. Subpoena of witnesses; contempt.
53-1-37. Service of notices and process upon board.
53-1-39. Appeals to the chancery court; pending cases in circuit court.
53-1-41. Restraining orders, injunctions against board.
53-1-43. Suits to restrain violations or threatened violations; lien remedy.
53-1-45. Appeals to Supreme Court.
53-1-47. Penalty for violations.

§ 53-1-1. Declaration of policy.

It is hereby declared to be in the public interests to foster, encourage and promote the development, production and utilization of the natural resources of oil and gas in the State of Mississippi; and to protect the public and private interests against the evils of waste in the production and utilization of oil and gas, by prohibiting waste as herein defined; to safeguard, protect and enforce the coequal and correlative rights of owners in a common source or pool of oil and gas to the end that each such owner in a common pool or source of supply of oil and gas may obtain his just and equitable share of production therefrom; and to obtain, as soon as practicable, consistent with the prohibition of waste, the full development by progressive drilling of other wells in all producing pools of oil and gas or of all pools which may hereafter be brought into production of such, within the state, until such pool is fully defined.

It is not the intent nor the purpose of this law to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Mississippi, on the basis of market demand. It is the intent and purpose of this law to permit each and every oil and gas pool in Mississippi to be produced up to its maximum efficient rate of production, subject to the prohibition of waste as herein defined, and subject further to the enforcement and protection of the coequal and correlative rights of the owners of a common source of oil and gas, so that each common owner may obtain his just and equitable share of production therefrom.

SOURCES: Codes, 1942, § 6132-01; Laws, 1948, ch. 256, § 1; Reenacted without change, Laws, 1982, ch. 485, § 1; Reenacted, Laws, 1990, ch. 357, § 1; Reenacted without change, Laws, 1991, ch. 340, § 1, eff from and after passage (approved March 11, 1991).

Cross References — Proceeds from leases of sixteenth section school lands or lieu lands located in area defined as coastal wetlands, see § 29-7-14.

Liability of discovery well to restrictions of §§ 53-1-1 through 53-1-47, see § 53-1-17.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Mississippi Mineral Resources Institute, see § 57-55-9.

Mississippi Energy Research Center, see § 57-55-15.

Marketing of natural gas, see § 75-58-1 et seq.

JUDICIAL DECISIONS

1. Construction and application.
2. Duties of lessee.
3. Miscellaneous.

1. Construction and application.

The use of the word "unit" rather than the word "pool" in one place in an order of the Oil and Gas Board did not invalidate the order. Stacy v. Tomlinson Interests, Inc., 405 So. 2d 93 (Miss. 1981).

The 1948 law limiting drilling units to 40 acres or less was prospective only, and did not destroy the established drilling units. Superior Oil Co. v. Beery, 216 Miss. 664, 64 So. 2d 357 (1953).

The 1932 and 1936 statutes had the effect of vesting in the board the power to prescribe rules for the spacing of oil and gas wells and to regulate the drilling for and production of oil and gas, and by implication these same statutes authorized the board to establish drilling units. Green v. Superior Oil Co., 59 So. 2d 100 (Miss. 1952).

Parties may not contract contrary to express policy of statute. Millette v. Phillips Petro. Co., 209 Miss. 687, 48 So. 2d 344 (1950).

2. Duties of lessee.

A mineral lessee has a duty not to deplete the resources of the lessor, including an obligation not to drain away the oil under the land without compensation.

Phillips Petro. Co. v. Millette, 221 Miss. 1, 72 So. 2d 176 (1954).

Those having the exclusive right to drill for and produce oil and gas represent the royalty owners in the drilling and spacing of wells in compliance with regulations of the state oil and gas board. Superior Oil Co. v. Beery, 216 Miss. 664, 64 So. 2d 357 (1953).

There is an implied covenant in a lease of oil property that the lessee will do nothing to impair the value of the lease, and that he must use reasonable care to protect lessor from damage or loss by affirmative act of such lessee, and this implied obligation has been extended to include, in the absence of express stipulation, a duty to drill offset wells if practicable and profitable. Millette v. Phillips Petro. Co., 209 Miss. 687, 48 So. 2d 344 (1950).

Although oil is a fugacious product and ordinarily belongs to the producer who captures it upon his own lands, yet when such producer is under an obligation to do nothing to destroy or deplete the lands of his lessor, he may not with impunity impair the value of the lessor's property. Millette v. Phillips Petro. Co., 209 Miss. 687, 48 So. 2d 344 (1950).

3. Miscellaneous.

The order of a state regulatory agency requiring an interstate natural gas pipeline company to take gas "ratably," that is, in proportion to the shares of various well owners and operators, from a common gas pool and to purchase the gas under nondiscriminatory conditions directly undermines Congress' determination under the Natural Gas Policy Act (15 USCS §§ 3301 et seq.) that the supply, the demand, and the price of the particular type of natural gas involved in the case be determined by market forces, in that the order threatens to distort the market by artificially increasing supply and price, disturbs the uniformity of the federal scheme for the regulation of all wholesales of natural gas enacted in the Natural Gas Policy Act (15 USCS §§ 3301 et seq.), since interstate pipelines will be forced to comply with varied state regulations of their purchasing practices, and would have the effect of increasing the ultimate price to consumers, thereby disrupting the federal goal enacted in the Natural Gas Policy Act (15 USCS §§ 3301 et seq.) to insure low prices most effectively. Transcontinental Gas Pipe Line Corp. v. Mississippi State Oil & Gas Bd., 474 U.S. 409, 106 S. Ct. 709, 88 L. Ed. 2d 732 (1986), reh'g denied, 475 U.S. 1091, 106 S. Ct. 1485, 89 L. Ed. 2d 738 (1986).

The order of a state regulatory agency requiring an interstate natural gas pipeline company to take gas "ratably," that is, in proportion to the shares of various well owners and operators, from a common gas pool and to purchase the gas under nondiscriminatory conditions is pre-empted by the comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce enacted in the Natural Gas Act (15 USCS §§ 717 et seq). Transcontinental Gas Pipe Line Corp. v. Mississippi State Oil & Gas Bd., 474 U.S. 409, 106 S. Ct. 709, 88 L. Ed. 2d 732 (1986), reh'g denied, 475 U.S. 1091, 106 S. Ct. 1485, 89 L. Ed. 2d 738 (1986).

Notwithstanding testimony that, if gas well were left shut-in, high concentration of carbon dioxide in well deposits would mix with water to produce carbonic acid causing irreparable damage to well tubing and casing, existing condition of well does not constitute "waste" within the meaning of §§ 53-1-1 and 53-1-3(k). Stack v. Tenneco, Inc., 641 F. Supp. 199 (S.D. Miss. 1986).

Production from a unit incorporating only a portion of leased land did not extend primary term of lease as to all of leased land whether within or without unit, despite the fact that it continued in force beyond the primary term that portion of the leased land incorporated into the unit. Texas Gulf Producing Co. v. Griffith, 218 Miss. 109, 65 So. 2d 447 (1953), error overruled, 218 Miss. 141, 65 So. 2d 834 (1953).

Requiring oil and gas lessees to pool their leases and establish unit has effect of extending primary terms of such leases and also has effect of pooling mineral interest of royalty owners. Superior Oil Co. v. Beery, 216 Miss. 664, 64 So. 2d 357 (1953).

Where mineral leases on two tracts of land were merged as one building unit and the assignees applied for permit on the whole tract, and also obtained a gas allowable for the entire tract and drain gas for the entire tract, but paid royalty only to owners of one tract, the assignees failed to preserve their property rights of royalty owners of that second tract, and these owners were entitled to discovery in the county. Griffith v. Gulf Ref. Co., 215 Miss. 15, 60 So. 2d 518 (1952), error overruled 215 Miss. 15, 61 So. 2d 306.

Where lessor filed a bill for the cancellation of an oil and gas lease and for damages from drainage of oil beneath the lands from nearby lands, which the lessee had leased and upon which he operated three producing wells, the bill stated a cause of action for equitable relief by way of compensation for the oil drained. Millette v. Phillips Petro. Co., 209 Miss. 687, 48 So. 2d 344 (1950).

ATTORNEY GENERAL OPINIONS

There are no statutory requirements on the sureties on the bonds required by the Oil and Gas Board, and, therefore, the Board and the Supervisor of the Board have the authority to determine the sufficiency and character of the surety and guarantors of such bonds. Boone, March 12, 1999, A.G. Op. #99-0075.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 133 et seq., 151 et seq.

9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:1 et seq.

CJS. 58 C.J.S., Mines and Minerals §§ 270 et seq.

Law Reviews. 1984 Mississippi Supreme Court Review: Administrative Law. 55 Miss. L. J. 25, March, 1985.

1987 Mississippi Supreme Court Review: The impact of the Transco decision on State regulation of the natural gas industry. 57 Miss. L. J. 85, April 1987.

§ 53-1-3. Definitions.

Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in Sections 53-1-1 through 53-1-47, inclusive, and in Sections 53-3-3 through 53-3-21, inclusive:

(a) "Board" shall mean the State Oil and Gas Board as created by Section 53-1-5.

(b) "Person" shall mean any individual, corporation, partnership, association, or any state, municipality, political subdivision of any state, or any agency, department or instrumentality of the United States, or any other entity, or any officer, agent or employee of any of the above.

(c) "Oil" shall mean crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas.

(d) "Gas" shall mean all natural gas, whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulphide, helium, carbon dioxide, nitrogen, hydrogen, casinghead gas, occluded natural gas from coal seams, compressed air and all other hydrocarbons not defined as oil in subsection (c) above.

(e) "Pool" shall mean an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure which is completely separated from any other zone in the structure is included in the term "pool" as used herein.

(f) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" shall include the underground reservoir or reservoirs containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools.

(g) "Owner" shall mean the person who has the right to drill into and produce from any pool, and to appropriate the production either for himself or for himself and another or others; "royalty owner" shall mean any person who possesses an interest in the production but who is not an "owner" as herein defined.

(h) "Producer" shall mean the owner of a well or wells capable of producing oil or gas or both.

(i) "Product" shall mean any commodity made from oil or gas, and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, casinghead gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two (2) or more liquid products or by-products derived from oil, condensate, gas or petroleum hydrocarbons, whether hereinabove enumerated or not.

(j) "Underground Injection Program" shall mean a program regulating the injection of any fluids produced or fluids associated with the exploration, storage and/or production of oil and/or gas and being among those other laws relating to the conservation of oil and gas as referred to in Section 53-1-17(a).

(k) "Illegal oil and illegal gas" shall mean oil or gas which has been produced within the State of Mississippi from any well during any time that the well has produced in excess of the amount allowed by law or by any rule, regulation or order of the board. "Illegal product" shall mean any product derived, in whole or in part, from illegal oil or illegal gas.

(*l*) "Waste" shall mean and include the following:

(i) The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results or tends to result in reducing the quantity of oil or gas ultimately to be recovered from any pool in this state.

(ii) The inefficient storing of oil; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

(iii) Abuse of the correlative rights and opportunities of each owner of oil or gas in a pool due to nonuniform, disproportionate, or unratable withdrawals causing undue drainage between tracts of land or resulting in one or more owners in such pool producing more than his just and equitable share of the production from such pool.

(iv) Producing oil or gas in such manner as to cause unnecessary channeling of water or gas or both or coning of water.

(v) The operation of any oil well or wells with an inefficient gas-oil ratio.

(vi) The drowning with water of any stratum or part thereof capable of producing oil or gas.

(vii) The creation of unnecessary fire hazards.

(viii) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

(ix) Permitting gas produced from a gas well to escape into open air.

(x) The use of gas from gas wells, except sour gas, for the manufacture of carbon black, except and unless the board shall find that there are no adequate pipeline connections to otherwise market the gas.

(m) "Drainage unit" or "drilling unit" shall mean the maximum area in a pool which may be assigned to one (1) well so as to produce the reasonably recoverable oil or gas in such area, shall be established by statewide rules or by special field rules of the board, and shall be of such size and configuration as will foster, encourage and promote the development, production and utilization of the natural resource of oil and gas.

(n) "Developed area" or "developed unit" shall mean a drainage unit having a well completed therein which is capable of producing oil or gas in paying quantities.

(o) A "certificate of compliance" shall mean a certificate issued by the board showing compliance with the conservation laws of the state, and conservation rules, regulations and orders of the board, prior to connection with a pipeline.

(p) A "certificate of clearance" shall mean a permit for the transportation or the delivery of oil, gas or products, approved and issued or registered under the authority of the board.

(q) "Supervisor" or "State Oil and Gas Supervisor" shall mean the officer appointed by the State Oil and Gas Board pursuant to Section 53-1-7.

(r) "Orphan well" shall mean any oil or gas well in the state, including Class II wells, which has not been properly plugged according to the requirements of the statutes, rules and regulations governing same and for which a responsible party such as an owner or operator cannot be located or for which, for whatever reason, there is no other party which can be forced to plug the well.

(s) "Refined hydrocarbons" shall mean any refined petroleum products.

(t) "Oil field exploration and production wastes" shall mean:

(i) Any liquid, gaseous, solid, naturally occurring radioactive, or other substance(s), including but not limited to, any chemical, produced water, sludge, oil-water emulsion, oil field brine, waste oil, sediment, scale or other waste substance(s);

(ii) Any equipment or any other related apparatus containing or contaminated with such substance(s) as set forth in subparagraph (i) above; or

(iii) Any land or structures containing or contaminated with such substance(s) as set forth in subparagraph (i) above, which is associated with, produced by, or used in the exploration, drilling, and/or production of oil, gas or other minerals within the territorial limits of the State of Mississippi.

(u) "Noncommercial disposal of oil field exploration and production waste" shall mean the storage, treatment, recovery, processing, disposal or acceptance of oil field exploration and production waste which is not commercial oil field exploration and production waste disposal as defined in Section 17-17-3.

SOURCES: Codes, 1942, § 6132-08; Laws, 1948, ch. 256, § 4; Laws, 1979, ch. 344; Reenacted, Laws, 1982, ch. 485, § 2; Laws, 1988, ch. 496; Laws, 1989, ch. 444, § 1; Reenacted and amended, Laws, 1990, ch. 357, § 12; Reenacted without change, Laws, 1991, ch. 340, § 2; Laws, 1991, ch. 344 § 1; Laws, 1992, ch. 344 § 1; Laws, 1995, ch. 356, § 1, eff from and after July 1, 1995.

Cross References — Payment of interest on royalty proceeds which have not been disbursed, see § 53-3-39.

Definition of "royalty owner" as applied to oil and gas royalty proceeds, see § 53-3-41.

Application of this section to definition of "non-operator" in Natural Gas Marketing Act, see § 75-58-7.

JUDICIAL DECISIONS

1. In general.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Contamination complained of by the landowners was deposited on their property in the course of oil and gas exploration and production activities pursuant to a mineral lease, and the contamination resulted from the oil company's noncommercial disposal of oil field exploration and production waste; the contamination resulted directly from oil field exploration and production activities on the property, not via commercial disposition, such that the Mississippi Oil and Gas Board had exclusive authority over noncommercial disposal of oil field exploration and production waste; therefore, the landowners had to assert their claims based on the contamination before the Board before suing privately. Town of Bolton v. Chevron Oil Co., 919 So. 2d 1101 (Miss. Ct. App. 2005).

Notwithstanding testimony that, if gas well were left shut-in, high concentration of carbon dioxide in well deposits would mix with water to produce carbonic acid causing irreparable damage to well tubing and casing, existing condition of well does not constitute "waste" within the meaning of §§ 53-1-1 and 53-1-3(k). Stack v. Tenneco, Inc., 641 F. Supp. 199 (S.D. Miss. 1986).

Mississippi's definition of waste under § 53-1-3 in no way controls for purposes of analysis under the Commerce Clause of the Constitution of the United States. Transcontinental Gas Pipeline Corp. v.

State Oil & Gas Bd. & Coastal Exploration of Miss., Inc., 457 So. 2d 1298 (Miss. 1984), probable jurisdiction noted, 470 U.S. 1083, 105 S. Ct. 1840, 85 L. Ed. 2d 140 (1985), rev'd on other grounds, 474 U.S. 409, 106 S. Ct. 709, 88 L. Ed. 2d 732 (1986), reh'g denied, 475 U.S. 1091, 106 S. Ct. 1485, 89 L. Ed. 2d 738 (1986).

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Duty and liability as to plugging oil or gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Mine tailings as real or personal property. 75 A.L.R.4th 965.

Who is "operator" of coal mine within the meaning of the Federal Coal Mine Safety and Health Act (30 USCS § 802(d)). 54 A.L.R. Fed. 792.

§ 53-1-5. Board created.

(1) There is hereby created and established a board to be known as the State Oil and Gas Board composed of five (5) members. One (1) member shall be appointed by the Lieutenant Governor for a term of four (4) years, and one (1) member shall be appointed by the Attorney General of the State of Mississippi for a term of four (4) years, which said two (2) members shall be appointed, one (1) from each of the United States district court districts. From and after April 15, 1992, such appointments by the Lieutenant Governor and the Attorney General shall be from the state at large rather than each United States district court district. Three (3) members shall be appointed by the Governor, one (1) from each of the Supreme Court districts for terms of the following duration: one (1) member from the First Supreme Court District for a term of two (2) years; one (1) member from the Second Supreme Court District for a term of four (4) years; and one (1) member from the Third Supreme Court District for a term of six (6) years.

At the expiration of the term of the members appointed by the Lieutenant Governor and Attorney General, each successor member shall be appointed for a term of four (4) years by the incumbent of the respective office. At the expiration of a term for which each of the original appointments of the Governor is made, each successor member shall be appointed for a term of six (6) years.

In the event of a vacancy, the Governor, Lieutenant Governor or Attorney General, as the case may be, shall, by appointment, fill such unexpired term. All members shall be confirmed by the Senate. Each member shall be eligible for reappointment at the discretion of the appointing officer. The board shall elect from its number a chairman and a vice-chairman. Each member of the board shall be a citizen of the United States, and a resident of the State of Mississippi, and a qualified elector therein, of integrity and sound and nonpartisan judgment. Each member shall qualify by taking the oath of office and shall hold office until his successor is appointed and qualified. The board shall establish its principal office at Jackson, Mississippi, at which the records of the board shall be kept.

Each member of the board shall receive as compensation for his services an annual salary of Seven Thousand Two Hundred Dollars ($7,200.00), except the chairman of the board who shall receive as compensation for his services an annual salary of Nine Thousand Six Hundred Dollars ($9,600.00). The receipt of said compensation shall not entitle members of the board to receive or be eligible for any state employee group insurance or retirement benefits.

(2) The board shall meet and hold hearings at such times and places as may be found by the board, or a majority thereof, to be necessary to carry out its duties. A majority of the board shall constitute a quorum, and three (3) affirmative votes shall be necessary for adoption or promulgation of any rule, regulation or order. Any member who shall not attend three (3) consecutive regular meetings of the board, for any reason other than illness of such member, shall be removed from office by the Governor. The chairman of the board shall notify the Governor in writing when any such member has failed to attend three (3) consecutive regular meetings.

(3) Where a question which has been presented or has arisen to be acted upon by the board directly affects the interest of a member or members of the board, such member or members shall recuse himself or themselves from acting upon such question.

(4) The board shall adopt an official seal, and may sue and be sued.

SOURCES: Codes, 1942, § 6132-02; Laws, 1932, ch. 117; Laws, 1948, ch. 256, § 2; Laws, 1950, ch. 213; Laws, 1966, ch. 279, § 1; Laws, 1982, ch. 485, § 3; Laws, 1983, ch. 536, § 4; Laws, 1988, ch. 590; Reenacted, Laws, 1990, ch. 357, § 2; Reenacted without change, Laws, 1991, ch. 340, § 3; Laws, 1992, ch. 310 § 1, eff from and after passage (approved April 15, 1992).

Cross References — Powers and duties of Governor, see § 7-1-1 et seq.

Powers and duties of Attorney General, see § 7-5-1 et seq.

Supreme Court districts, see § 9-3-1.

Information to be provided to the tax collector to assist in the enforcement and collection of the local privilege tax on drilling rigs, see § 27-17-423.

Copies of maps or plats of state's territorial waters, made and adopted for mineral leasing purposes, see § 29-7-3.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Surface mining and reclamation of land, see § 53-7-1 et seq.

Duty of the board to administer and enforce provisions relating to surface mining and reclamation of land, see § 53-7-19.

Creation, composition, powers, and duties of Department of Community Development, see § 57-1-1 et seq.

Natural gas marketing, see § 75-58-1 et seq.

§ 53-1-7. State supervisor; funding of agency expenses; deposit of monies into State General Fund.

The board shall appoint a State Oil and Gas Supervisor, herein called supervisor, who shall be a competent and qualified administrator and receive as compensation for his services an annual salary to be fixed by law. The supervisor shall be solely responsible for the administration of the offices of the State Oil and Gas Board and shall be charged with the duty of enforcing

Sections 53-1-1 through 53-1-47, and Sections 53-3-3 through 53-3-165, and all rules, regulations and orders duly adopted by the board. The supervisor shall be ex officio secretary of the board and shall give bond, in such sum as the board may direct, with corporate surety to be approved by the board, conditioned that he will well and truly account for all funds coming into his hands as such secretary. He shall remit to the State Treasurer all monies collected by him as such secretary for deposit in trust for the use of the board in a special fund known as the Oil and Gas Conservation Fund to be expended as provided by law.

The supervisor shall devote his entire time to his official duties.

In addition, it shall be the supervisor's duty and responsibility to:

(a) Supervise and manage all personnel of the offices of the Oil and Gas Board.

(b) Formulate the duties and responsibilities of every staff employee in detail, including written job descriptions and written policies and procedures for performing staff tasks.

(c) Outline a detailed method of preparing, and devise a systematic procedure for the filing of reports by field inspectors.

(d) Formulate written policies and procedures for the effective and efficient operation of the office, and present these policies and procedures to the board for promulgation.

(e) Supervise the provision of technical support and assistance to the board in its decision-making capacity.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Codes, 1942, §§ 6132-03, 6132-06; Laws, 1948, ch. 256, §§ 3a, 3d; Laws, 1950, ch. 220, § 1; Laws, 1982, ch. 485, § 4; Reenacted, Laws, 1990, ch. 357, § 3; Reenacted without change, Laws, 1991, ch. 340, § 4; Laws, 2016, ch. 459, § 39, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.'"

Amendment Notes — The 2016 amendment added the last two paragraphs.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Oil and gas conservation fund, see § 53-1-77.

Requirements for transportation of petroleum substances, see § 53-3-201 et seq.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

§ 53-1-9. Employees.

The supervisor shall have the authority, and it shall be his duty, to employ geologists, petroleum engineers, field inspectors and any other personnel necessary to carry out the duties and responsibilities fixed upon him. No person shall be permanently employed by the board who is not a resident and qualified elector of the State of Mississippi.

SOURCES: Codes, 1942, § 6132-04; Laws, 1948, ch. 256, § 3b; Laws, 1950, ch. 220, § 1; Laws, 1982, ch. 485, § 5; Reenacted, Laws, 1990, ch. 357, § 4; Reenacted without change, Laws, 1991, ch. 340, § 5, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-11. Attorney for board.

The Attorney General shall be the attorney for the board and for the supervisor. However, the board may, from any funds available, retain additional counsel to assist the Attorney General. Any member of the board, or the secretary thereof, shall have the power to administer oaths to any witness in any hearings, investigations or proceedings contemplated by this chapter or by any other law of this state relating to the conservation of oil and gas.

SOURCES: Codes, 1942, § 6132-05; Laws, 1948, ch. 256, § 3c; Laws, 1950, ch. 220, § 1; Laws, 1982, ch. 485, § 6; Reenacted, Laws, 1990, ch. 357, § 5; Reenacted without change, Laws, 1991, ch. 340, § 6, eff from and after passage (approved March 11, 1991).

Cross References — Appointment and employment by Attorney General of assistant attorneys general and special assistant attorneys general, see § 7-5-5.

Duty of Attorney General to represent state and state officers in suits, see § 7-5-39.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-13. Board; employee eligibility.

No person while engaged in the business of, or in the employ of, or holding an official connection or position with, any person, firm, partnership, corporation or association engaged in the business of buying or selling mineral leases or minerals, drilling wells in search of oil or gas, producing, transporting, refining or distributing crude oil or natural gas in this state, or any other state, shall be eligible as a member of the board or as an employee thereof.

SOURCES: Codes, 1942, § 6132-06; Laws, 1948, ch. 256, § 3d; Laws, 1950, ch. 220, § 1; Reenacted without change, Laws, 1982, ch. 485, § 7; Reenacted, Laws, 1990, ch. 357, § 6; Reenacted without change, Laws, 1991, ch. 340, § 7, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-15. Expenses.

Each member of the board, its employees, and the supervisor shall be reimbursed for necessary and reasonable traveling expenses while traveling on the business of the board upon a signed itemized statement thereof approved by the board. The board may incur the necessary and reasonable expenses for the purpose of carrying out its duties and responsibilities as fixed by law.

SOURCES: Codes, 1942, § 6132-07; Laws, 1948, ch. 256, § 3e; Laws, 1950, ch. 220, § 1; Reenacted without change, Laws, 1982, ch. 485, § 8; Reenacted, Laws, 1990, ch. 357, § 7; Reenacted without change, Laws, 1991, ch. 340, § 8, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17. Fund for payment of reasonable living expense of supervisor, see § 53-3-13.

§ 53-1-17. Powers of board.

(1) The board shall have jurisdiction and authority over all persons and property necessary to enforce effectively the provisions of this chapter and all other laws relating to the conservation of oil and gas.

(2) The board shall have the authority, and it shall be its duty, to make such inquiries as it may think proper to determine whether or not waste, over which it has jurisdiction, exists or is imminent. In the exercise of such power the board shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records, including drilling records and logs; to examine, check, test and gauge oil and gas wells, tanks, refineries and modes of transportation; to hold hearings; to require the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce the provisions of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive.

(3) The board shall have the authority, and it shall be its duty, to make, after notice and hearing as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of the provisions of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, and to amend the same after due notice and hearing, including but not limited to, rules, regulations and orders for the following purposes:

(a) To require that the drilling, casing and plugging of wells be done in such a manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of freshwater supplies by oil, gas or saltwater; and generally to prevent waste as herein defined. The duty is hereby imposed upon the State Oil and Gas Board to make suitable and adequate rules and regulations, subject to the approval of the Mississippi Commission on Environmental Quality, requiring the disposal of waste products such as, but not limited to, mud, acids, saltwater or any corrosive products brought to the surface from any oil, gas or condensate well in this state, to prevent seepage, overflow or damage and injury to the topsoil or surface. The Commission on Environmental Quality shall have the exclusive authority to regulate the commercial disposal of such waste products pursuant to Section 17-17-47. However, the board shall have the exclusive authority to regulate and promulgate rules and regulations pertaining to commercial and noncommercial Class II underground injection wells. It is the policy of the state not only to conserve minerals but to conserve and protect its surface lands for agriculture, timber and any and all other beneficial purposes, and the destruction of surface lands where reasonable means of their protection exist shall no longer be permitted.

(b) To require the making of reports showing the location of oil and gas wells; to require the filing, within thirty (30) days from the time of the completion of any wells drilled for oil or gas, of logs and drilling records.

(c) To require adequate proof of financial responsibility in a form acceptable to the board and conditioned for the performance of the duties outlined in paragraphs (a) and (b) of this subsection, including the duty to plug each dry or abandoned well.

(d) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(e) To require the operation of wells with efficient gas-oil ratios, and to fix the limits of such ratios.

(f) To prevent "blowouts," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(g) To prevent the creation of unnecessary fire hazards.

(h) To identify the ownership of all oil and gas wells producing leases, refineries, tanks, plants, structures and storage and transportation equipment and facilities.

(i) To regulate the shooting, perforating and chemical treatment of wells.

(j) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(k) To regulate the spacing of wells and to establish drilling units.

(*l*) To allocate and apportion the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined, and to allocate such production among or between tracts of land under separate ownership in such pool on a fair and equitable basis to the end that each such tract will be permitted to produce not more than its just and equitable share from the pool. The owners and producers of each discovery well located in a new field or pool shall certify to the Oil and Gas Board an itemized list of the expenses incurred in the actual drilling of such well. The Oil and Gas Board shall investigate such cost and shall certify the amount found by them to be correct. The discovery well shall not be liable to the restrictions of Sections

53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, until the cost of drilling such well shall have been recovered in oil or gas from said discovery well. Such cost having been recovered, the discovery well shall be subject to the terms of said sections as are other wells in the field.

(m) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(n) To require all of those making settlement with the owners of oil or gas interests to render statements to such owners showing the quantity and gravity purchased and the price per barrel of oil or one thousand (1,000) cubic feet of gas.

(o) To require, either generally or with respect to particular areas, certificates of clearance in connection with the transportation or delivery of oil, gas or any product thereof.

(p) To promulgate rules and regulations governing the safety of storage of gas, liquefied petroleum gases, refined hydrocarbons and/or oil in underground storage wells, but the jurisdiction of the State Oil and Gas Board regarding safety shall cease upon reaching header on flow line beyond associated wellhead facilities, which includes the wellhead, manual and automatic safety valves, automatic shut-in safety devices, flow lines from wellhead to header, brine lines, and tanks or pits and flares.

(q) To make such determinations of oil and/or natural gas maximum lawful ceiling prices as allowed by federal or state law.

(4) In order to carry out its duties and responsibilities as fixed by law, the board is authorized and empowered to purchase, own and operate automobiles in the number and in the manner specified in Section 25-1-85. The board is further authorized and empowered to purchase, in the manner specified by law, operate and maintain in good order the necessary and suitable equipment required to install a complete radio base station, including mobile units to be installed in automobiles owned by the board.

(5) The board shall have the authority, and it shall be its duty, to promulgate official policies of the board.

(6) The board shall continue to have the power to make rules, regulations and orders necessary to prevent and protect against discrimination in the purchase, production and sale of oil and gas and against the unratable withdrawal of same, including as provided in Statewide Rule 48.

(7) Notwithstanding any other provision contained in the Laws of the State of Mississippi, the board shall have exclusive jurisdiction and authority, and it shall be its duty, to make, after notice and hearing as hereinafter provided, such reasonable rules, regulations, standards and orders, and to issue such permits as may be necessary, to regulate the use, management, manufacture, production, ownership, investigation and noncommercial disposal of oil field exploration and production waste in order to prevent, eliminate or reduce waste by pollution to acceptable levels in order to protect the public health, safety and the environment.

SOURCES: Codes, 1942, §§ 6132-10, 6132-10.5; Laws, 1932, ch. 117; Laws, 1948, ch. 256, § 6; Laws, 1956, ch. 163, §§ 1, 2; Laws, 1970, ch. 301, § 1; Laws, 1975, ch. 419, § 1; Reenacted and amended, Laws, 1982, ch. 485, § 9; Laws, 1983, ch. 359, § 1, ch. 506, § 1; Reenacted, Laws, 1990, ch. 357, § 8; Reenacted without change, Laws, 1991, ch. 340, § 9; Laws, 1991, ch. 605 § 2; Laws, 1992, ch. 344 § 2; Laws, 1995, ch. 356, § 2, eff from and after July 1, 1995.

Editor's Note — Section 25-1-85, referred to in (4), was repealed by Laws of 2001, ch. 561, § 2, effective from and after passage (approved April 7, 2001).

Cross References — Exclusive authority of State Oil and Gas Board to make rules and regulations pertaining to disposal of oil field waste deposits under solid wastes disposal law, see § 17-17-47.

Information to be provided to the tax collector to assist in the enforcement and collection of the local privilege tax on drilling rigs, see § 27-17-423.

Duty of State Oil and Gas Board to cooperate with State Tax Commission, see § 29-1-133.

Application of this section to the definition of "underground injection program", see § 53-1-3.

Promulgation of regulations for transportation of petroleum substances, see § 53-3-201.

Jurisdiction of board regarding underground storage of gases in reservoirs dissolved in salt beds, see § 75-57-13.

JUDICIAL DECISIONS

1. Generally.
2. Construction and application.
3. General powers of board.
4. State preemption.
5. Review.
6. Miscellaneous.
7. Under former law.

1. Generally.

In the definition of gas pools, the granting of spacing exceptions, and authorization to dually complete a well, the state oil and gas board acts primarily in a legislative and administrative capacity. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

It cannot be assumed that the board will treat wells which are dually produced in a discriminatory manner in regard to allocations of production. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

The board is not bound to adhere to a strata definition made 16 years earlier, when the facts now reflect new data and different requirements. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

Oil, gas and mineral leases are construed subject to the applicable statutes for the conservation of oil and gas, and the orders, rules and regulations of the board promulgated pursuant to the statutes. Frost v. Gulf Oil Corp., 238 Miss. 775, 119 So. 2d 759, 100 A.L.R.2d 876 (1960).

2. Construction and application.

Subsections (3)(a) and (7) are regulating different areas and, therefore, can be read in harmony. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

The provisions of Code 1942, § 6132-10, subdivision (c) (12) are not applicable to a situation where an oil well, the drilling of which has been paid for from oil production, is recompleted as a gas well. Frost v. Gulf Oil Corp., 238 Miss. 775, 119 So. 2d 759, 100 A.L.R.2d 876 (1960).

3. General powers of board.

The Oil & Gas Board properly promulgated a rule regarding the control of naturally occurring radioactive material as the order promulgating the rule was founded on substantial evidence, was neither arbitrary nor capricious, was within the authority of the board, and was not a violation of some constitutional or statutory right. Boyles v. Mississippi State Oil & Gas Bd., 794 So. 2d 149 (Miss. 2001).

When the Oil & Gas Board promulgates a rule regarding the disposal of waste products, as mentioned in subsection (3)(a), the statute requires that the board gain the approval of the Commission on Environmental Quality; however, when regulating the control of naturally occurring radioactive material when it is present in an oilfield, the board has exclusive jurisdiction and authority and is not required to seek commission approval before promulgating a rule. Boyles v. Mississippi State Oil & Gas Bd., 794 So. 2d 149 (Miss. 2001).

The order of a state regulatory agency requiring an interstate natural gas pipeline company to take gas "ratably," that is, in proportion to the shares of various well owners and operators, from a common gas pool and to purchase the gas under nondiscriminatory conditions directly undermines Congress' determination under the Natural Gas Policy Act (15 USCS §§ 3301 et seq.) that the supply, the demand, and the price of the particular type of natural gas involved in the case be determined by market forces, in that the order threatens to distort the market by artificially increasing supply and price, disturbs the uniformity of the federal scheme for the regulation of all wholesales of natural gas enacted in the Natural Gas Policy Act (15 USCS §§ 3301 et seq.), since interstate pipelines will be forced to comply with varied state regulations of their purchasing practices, and would have the effect of increasing the ultimate price to consumers, thereby disrupting the federal goal enacted in the Natural Gas Policy Act (15 USCS §§ 3301 et seq.) to insure low prices most effectively. Transcontinental Gas Pipe Line Corp. v. Mississippi State Oil & Gas Bd., 474 U.S. 409, 106 S. Ct. 709, 88 L. Ed. 2d 732 (1986), reh'g denied, 475 U.S. 1091, 106 S. Ct. 1485, 89 L. Ed. 2d 738 (1986).

The order of a state regulatory agency requiring an interstate natural gas pipeline company to take gas "ratably," that is, in proportion to the shares of various well owners and operators, from a common gas pool and to purchase the gas under nondiscriminatory conditions is pre-empted by the comprehensive scheme of federal regulation of all wholesales of natural gas in interstate commerce enacted in the Natural Gas Act (15 USCS §§ 717 et seq). Transcontinental Gas Pipe Line Corp. v. Mississippi State Oil & Gas Bd., 474 U.S. 409, 106 S. Ct. 709, 88 L. Ed. 2d 732 (1986), reh'g denied, 475 U.S. 1091, 106 S. Ct. 1485, 89 L. Ed. 2d 738 (1986).

The act of the state oil and gas board in amending its statewide rules to widen and increase the spacing pattern for oil and gas wells drilled below 12,000 feet, and in the Pennsylvanian and older formations below a measured depth of 3,500 feet, to a drilling unit of 80 acres for an oil well and a drilling unit of 640 acres for a gas well, was not arbitrary or capricious and was not beyond the power of the board. State Oil & Gas Bd. v. Mississippi Mineral & Royalty Owners Ass'n, 258 So. 2d 767 (Miss. 1971).

The board has the duty to require that separate oil and gas pools be separately produced, so that the hydrocarbons in one of them cannot be commingled with those of another, and, ample power to effectuate such responsibility. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

The state oil and gas board has power to fix the limits of gas-oil ratios, to regulate secondary recovery methods, to allocate the production of oil and gas from any proof for the prevention of waste, and to allocate on a fair and equitable basis the permissible production among tracts under separate ownership. Barnwell, Inc. v. Sun Oil Co., 249 Miss. 398, 162 So. 2d 635 (1964).

The board has power to allocate production to non-signing property owners in a unitized field only on the basis of production which constitutes a withdrawal from the tracts making up the drilling unit in which the producer has an interest. Corley v. Mississippi State Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

Reduction in allowable production per surface acre, the reassignment of allowables for deficient units and a redefinition of the oil-producing field to which its regulations apply, are within board's powers. Corley v. Mississippi State Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

The board may prescribe different size units for a pool. Corley v. Mississippi State

Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

4. State preemption.

Forrest County Board of Supervisors had the authority to enact a fencing ordinance under the home rule statute and the ordinance was not preempted by state law since: (1) the Mississippi legislature had not expressly granted the Mississippi Oil and Gas Board (OGB) the exclusive authority to address industry safety issues: (2) the ordinance was not inconsistent with state oil and gas statutes and regulations; and (3) the OGB had not promulgated any regulation prohibiting perimeter fencing. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

5. Review.

The standard for judicial review of the orders of the state oil and gas board is whether the order is supported by substantial evidence, is arbitrary or capricious, beyond the power of the board to make, or violates some constitutional right of the complaining party. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

In a proceeding to review an order of the state oil and gas board, amending field rules and redefining gas pools in a part of a particular field so as to recognize the existence of two separate pools, the board was justified from the evidence in holding that perforations and production of the various strata subsequent to a 1952 definition, have not made the sands in the two pools connected so as to form one pool, the board apparently determining the limits on the basis of engineering and geologic facts. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

Since the board has the duty to require that gas or oil pools be separately produced and not commingled, an order of the board amending field rules and redefining gas pools in a part of a particular field so as to recognize the existence of two separate pools, was not arbitrary or so unreasonable as to invalidate it. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

Where the gas and oil board on petition, and after due notice to all parties, entered an order establishing five gas units as exception units for production of gas from a specified pool and provided for allowables, and found that production from these units, including the unit encompassing a 115-acre tract, would fully and adequately protect the correlative rights of all interested owners in the production from the pool, the order adjudicated all things necessary for the establishment of said units for gas production, and this was all that was necessary to constitute the pooling and integration of the deep rights of owners of one-half mineral interest in the 115 acres. Frost v. Gulf Oil Corp., 238 Miss. 775, 119 So. 2d 759, 100 A.L.R.2d 876 (1960).

6. Miscellaneous.

Because the amendments to State Oil and Gas Board Rule 68 regulated the disposal of Naturally Occurring Radioactive Materials (NORM), and subsection (3)(a) did not distinguish between commercial and noncommercial disposal of waste when stating that the Mississippi Oil and Gas Board had to seek the approval of the Mississippi Commission on Environmental Quality, the Board exceeded its authority by not seeking the approval of the Commission before adopting the amendments. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Forrest County fencing ordinance that required perimeter fencing around oil and gas facilities did not materially impede the Mississippi Oil and Gas Board's authority to make inspections of oil and gas sites and the requirement that the Mississippi State Oil and Gas supervisor and his representatives to have access to all wells drilled for oil and gas at any and all times in light of the public policy considerations of protecting private property and the health and safety of Forrest County citizens cited by the Forrest County Board of Supervisors in adopting the ordinance. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

In cases where private plaintiffs were seeking cleanup of oil production byproducts, the Mississippi Oil and Gas Board remedy was adequate and should have been exhausted prior to filing a private lawsuit for damages. Chevron U.S.A., Inc. v. Smith, 844 So. 2d 1145

(Miss. 2002), writ of certiorari denied by 540 U.S. 881, 124 S. Ct. 327, 157 L. Ed. 2d 147, 2003 U.S. LEXIS 6289, 72 U.S.L.W. 3241 (2003).

Fairness to those bearing the expense of secondary recovery warrants a refusal to increase the allowables of non-participants. Barnwell, Inc. v. Sun Oil Co., 249 Miss. 398, 162 So. 2d 635 (1964).

Secondary recovery of petroleum by injecting water, under permission given pursuant to this statute, held not shown to constitute an imminent danger to other wells warranting a temporary injunction. Barnwell Drilling Co. v. Sun Oil Co., 300 F.2d 298 (5th Cir. 1962).

7. Under former law.

Code 1942, § 6136. In adopting a general rule or regulation prescribing the spacing of oil wells, the board acts in a legislative capacity, and, in granting an exception to such rule pursuant to an express reservation of that right in the rule, the board acts in at least a quasi legislative capacity. California Co. v. State Oil & Gas Bd., 200 Miss. 824, 27 So. 2d 542 (1946), error overruled, 200 Miss. 847, 28 So. 2d 120 (1946).

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Duty and liability as to plugging oil or gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 136, 142 et seq., 269 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Gas and Oil, Form 11.1 (petition or application-before regulatory commission-seeking spacing variance of well locations).

12 Am. Jur. Pl & Pr Forms (Rev), Gas and Oil, Forms 16.1 (order-setting hearing for spacing variance); 16.2 (notice-hearing for spacing variance); 16.3 (order-granting spacing variance).

CJS. 58 C.J.S., Mines and Minerals §§ 270 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review: The impact of the Transco decision on State regulation of the natural gas industry. 57 Miss. L. J. 85, April 1987.

§ 53-1-19. Rules of procedure before board to be consistent with Title 25, Chapter 43; recording and preservation of proceedings.

The board shall prescribe its rules of order or procedure in hearings or other proceedings before it consistent with Title 25, Chapter 43. The board may provide for the recording and preservation of its proceedings by order entered on its minutes.

SOURCES: Codes, 1942, § 6132-11; Laws, 1948, ch. 256, § 7a; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1a; Reenacted without change, Laws, 1982, ch. 485, § 10; Laws, 1988, ch. 431, § 1, Reenacted, Laws, 1990, ch. 357, § 9; Reenacted without change, Laws, 1991, ch. 340, § 10; Laws, 2007, ch. 325, § 1, eff from and after July 1, 2007.

Cross References — Court reporters and court reporting generally, see § 9-13-1 et seq.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Appeals to circuit court by those aggrieved by any final rule, regulation or order of State Oil and Gas Board, see § 53-1-39.

Underground storage authorized pursuant to board's order, see § 53-3-155.

JUDICIAL DECISIONS

1. In general.
The Mississippi Rules of Civil Procedure do not apply to proceedings before the State Oil & Gas Board. State Oil & Gas Bd. v. McGowan, 542 So. 2d 244 (Miss. 1989).

§ 53-1-21. Public hearing.

No rule, regulation, or order and no change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the board except after a public hearing upon at least ten (10) days' notice, which notice may be given by publication in some newspaper of general circulation in the state and also in a newspaper of general circulation in the county or counties in which pools are located, in the manner and form as may be prescribed by the board, or by such other method as may be prescribed by the board by general rule. Such public hearing shall be held at such time and at such place as may be prescribed by the board, and any person having any interest in the subject matter shall be entitled to be heard.

SOURCES: Codes, 1942, § 6132-12; Laws, 1948, ch. 256, § 7b; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1b; Reenacted without change, Laws, 1982, ch. 485, § 11; Reenacted, Laws, 1990, ch. 357, § 10; Reenacted without change, Laws, 1991, ch. 340, § 11, eff from and after passage (approved March 11, 1991).

Cross References — Newspapers in which legal notices may be published, see § 13-3-31.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Integration of interests; pooling agreements and orders, see § 53-3-7.

JUDICIAL DECISIONS

1. In general.
Where an integration order has been reversed because 20 acres of non-contiguous land was included in the 320 acre drilling unit, the reversal was without prejudice to the right of any party in interest in the 300 acres to institute any further proceedings to obtain order of integration of lands and leases in the unit, although there would be no interest in the non-contiguous 20 acres erroneously included or in the 20 acres necessary to be substituted. Superior Oil Co. v. Griffith, 214 Miss. 891, 60 So. 2d 505 (1952).

§ 53-1-23. Emergency rules, regulations, or orders.

In the event an emergency is found to exist by the board which, in its judgment, requires the making, changing, renewal, or extension of a rule, regulation, or order without first having a hearing, such emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than forty-five (45) days from its effective date, and, in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

SOURCES: Codes, 1942, § 6132-13; Laws, 1948, ch. 256, § 7c; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1c; Reenacted without change, Laws, 1982, ch. 485, § 12; Reenacted, Laws, 1990, ch. 357, § 11; Reenacted without change, Laws, 1991, ch. 340, § 12, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-25. Notice and service of process.

In any instance the board may give notice by personal service, in which event written notice thereof may be issued by any member of the board or by the supervisor, and service thereof may be made as provided by the Mississippi Rules of Civil Procedure.

SOURCES: Codes, 1942, § 6132-14; Laws, 1948, ch. 256, § 7d; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1d; Reenacted without changes, Laws, 1982, ch. 485, § 13; Reenacted and amended, Laws, 1990, ch. 357, § 13; Reenacted without change, Laws, 1991, ch. 340, § 13; Laws, 1991, ch. 573, § 115, eff from and after July 1, 1991.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

JUDICIAL DECISIONS

1. In general.

Where persons appeared as parties before the state oil and gas board in a hearing and participated therein and also where they participated in an appeal to the Supreme Court, they were in no position to complain that they were not afforded ample notice of the hearing. Ohio Oil Co. v. Porter, 225 Miss. 55, 82 So. 2d 636 (1955).

§ 53-1-27. Record of rules, regulations and orders.

All rules, regulations, and orders made by the board shall be in writing and shall be entered in full by the secretary of the board in a book to be kept for such purpose by the board, which shall be a public record and open to inspection at all times during reasonable office hours. A copy of any rule, regulation, or order, certified by a member of the board, or the secretary thereof, shall be received in evidence in all courts of this state with the same effect as the original.

SOURCES: Codes, 1942, § 6132-15; Laws, 1948, ch. 256, § 7e; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1e; Reenacted without change, Laws, 1982, ch. 485, § 14; Reenacted, Laws, 1990, ch. 357, § 14; Reenacted without change, Laws, 1991, ch. 340, § 14, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-29. Request for hearing.

Any interested person shall have the right to have the board call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the board by making a request therefor in writing. Upon the receipt of any such request, the board promptly shall call a hearing thereon, and, after such hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate.

SOURCES: Codes, 1942, § 6132-16; Laws, 1948, ch. 256, § 7f; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1f; Reenacted without change, Laws, 1982, ch. 485, § 15; Reenacted, Laws, 1990, ch. 357, § 15; Reenacted without change, Laws, 1991, ch. 340, § 15, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

JUDICIAL DECISIONS

1. In general.

The board's failure to take action on a petition for forced integration within 30 days of the conclusion of the hearing did not invalidate its order since the statute does not so provide; the board thus had the right to continue the hearing, as it did, and continue the entire matter until the proper order could be drafted. Rogers v. State, 295 Ala. 416, 329 So. 2d 612 (1976).

Due process does not require allocation of permissible production on the basis of the productivity of each well instead of upon a surface acreage basis. Barnwell, Inc. v. Sun Oil Co., 249 Miss. 398, 162 So. 2d 635 (1964).

The purpose of this section [Code 1942, § 6132-16] was to place upon the board a responsibility to act expeditiously and it does not provide that action of the board taken more than thirty days after a hearing is invalid. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

Where a hearing on lessee's petition for integration of mineral interests in lands within gas drilling units was held by state oil and gas board in July and the matter continued and taken under advisement filled the regular August meeting when at that time the board rendered its decision in oral form and continued this docket over to the regular September meeting for the purpose of entering orders in accordance with the decision and the final order was executed in September, this order was not void because it did not comply with this section [Code 1942, § 6132-16] since the board had the right to continue the hearing in order to determine what it would do. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

§ 53-1-31. Records; inspection by public.

The permanent records of the board shall be available, upon request, for inspection by the public in accordance with the established procedures of the office of the Oil and Gas Board and during reasonable office hours. All well logs, casing records, compiled data and other information shall be properly indexed and suitably recorded in the permanent records of the board.

SOURCES: Codes, 1942, § 6132-17; Laws, 1932, ch. 117; Laws, 1948, ch. 256, § 7g; Laws, 1950, ch. 220, § 2; Laws, 1958, ch. 185, § 1g; Laws, 1982, ch. 485, § 16; Reenacted, Laws, 1990, ch. 357, § 16; Reenacted without change, Laws, 1991, ch. 340, § 16, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-33. Supervisor and his representatives to have access to all wells.

The supervisor and his representatives or employees shall have access to all wells drilled for oil or gas at any and all times, and any person operating or controlling any lease or property shall permit them to go upon same and inspect any and all wells and well records, while the wells are being drilled and at all other times, and to have such control of such property, machinery and appliances as may be requisite to gauge the wells. However, the well records of any well drilled in unproved territory shall not be subject to such inspection until thirty (30) days after the completion of the well.

SOURCES: Codes, 1942, § 6132-18; Laws, 1932, ch. 117; Laws, 1948, ch. 256, § 8a; Laws, 1982, ch. 485, § 17; Reenacted, Laws, 1990, ch. 357, § 17; Reenacted without change, Laws, 1991, ch. 340, § 17, eff from and after passage (approved March 11, 1991).

Cross References — Information to be provided to the tax collector to assist in the enforcement and collection of the local privilege tax on drilling rigs, see § 27-17-423.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

JUDICIAL DECISIONS

1.-2. [Reserved for future use.]
3. Access not impeded.

1.-2. [Reserved for future use.]

3. Access not impeded.

Forrest County fencing ordinance that required perimeter fencing around oil and gas facilities did not materially impede the Mississippi Oil and Gas Board's authority to make inspections of oil and gas sites and the requirement that the Mississippi State Oil and Gas supervisor and his representatives to have access to all wells drilled for oil and gas at any and all times in light of the public policy considereations of protecting private property and the health and safety of Forrest County citizens cited by the Forrest County Board of Supervisors in adopting the ordinance. Delphi Oil, Inc. v. Forrest County Bd. of Supervisors, 114 So. 3d 719 (Miss. 2013).

§ 53-1-35. Subpoena of witnesses; contempt.

(a) The board, or any member thereof, or the supervisor is hereby empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before the board, and to require the production of such books, papers and records in any proceeding before the board as may be material upon questions lawfully before the board. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the board or a court, or from obedience to the subpoena of the board, or any member thereof, or the supervisor or a court on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, nothing herein contained shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such board or court for determination. No natural person shall be subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may be required to testify or produce evidence, documentary or otherwise, before the board or court, or in obedience to any such subpoena, but no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the board, or any member thereof, or the supervisor, or in case of the refusal of any witness to testify or answer to any matter regarding which he may be lawfully interrogated, the judge of the chancery court of the county of the residence of such person, if a resident of Mississippi, or the judge of the chancery court of the county in which the land lies, or any portion thereof, out of which the controversy arises, if such person is not a resident of the State of Mississippi, on application of the board, or any member thereof, or the supervisor, may, in termtime or vacation, issue an attachment for such person and compel him to comply with such subpoena and to attend before the board and produce such documents, and give his testimony upon such matters, as may be lawfully required; and such court shall have the power to punish for contempt as in case of disobedience of like subpoenas issued by or from such court, or for a refusal to testify therein.

SOURCES: Codes, 1942, § 6132-19; Laws, 1948, ch. 256, § 8b, c; Reenacted without change, Laws, 1982, ch. 485, § 18; Laws, 1988, ch. 431, § 2; Reenacted, Laws, 1990, ch. 357, § 18; Reenacted without change, Laws, 1991, ch. 340, § 18, eff from and after passage (approved March 11, 1991).

Cross References — Subpoenas of witnesses in civil cases generally, see § 13-3-93.
Powers and duties of State Oil and Gas Board, see § 53-1-17.
Subpoenas of witnesses in criminal cases generally, see § 99-9-11.
Service of subpoenas in criminal cases, see § 99-9-17.

§ 53-1-37. Service of notices and process upon board.

All notices or other process authorized or required to be served upon the board may be served upon the supervisor or upon any member of the board.

SOURCES: Codes, 1942, § 6132-20; Laws, 1948, ch. 256, § 8d; Reenacted without a change, Laws, 1982, ch. 485, § 19; Reenacted, Laws, 1990, ch. 357; Reenacted without change, Laws, 1991, ch. 340, § 19, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-1-39. Appeals to the chancery court; pending cases in circuit court.

(a) In addition to other remedies now available, the state, or any interested person aggrieved by any final rule, regulation or order of the board, shall have the right, regardless of the amount involved, of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or to the chancery court of the county in which all or a part of appellant's property affected by such rule, regulation or order is situated, which shall be taken and perfected as hereinafter provided, within thirty (30) days from the date that such final rule, regulation or order is filed for record in the office of the board; and the said chancery court may affirm such rule, regulation or order, or reverse same for further proceedings as justice may require. All such appeals shall be taken and perfected, heard and determined either in termtime or in vacation on the record, including a transcript of pleadings and testimony, both oral and documentary, filed and heard before the board, and such appeal shall be heard and disposed of promptly by the court as a preference cause. In perfecting any appeal provided by this section, the provisions of law respecting notice to the reporter and the allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to Supreme Court shall be applicable. However, the reporter shall transcribe his notes and file the transcript of the record with the board within thirty (30) days after approval of the appeal bond.

(b) Upon the filing with the board of a petition for appeal to the chancery court, it shall be the duty of the board, as promptly as possible, and in any event within sixty (60) days after approval of the appeal bond, to file with the clerk of the chancery court to which the appeal is taken, a copy of the petition for appeal and of the rule, regulation or order appealed from, and the original and one (1) copy of the transcript of the record of proceedings in evidence before the board. After the filing of said petition, the appeal shall be perfected by the filing with the clerk of the chancery court to which the appeal is taken of bond in the sum of Five Hundred Dollars ($500.00) with two (2) sureties or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of such appeal; said bond to be approved by any member of the board or by the supervisor, or by the clerk of the court to which such appeal is taken. The perfection of an appeal shall not stay or suspend the operation of any rule, regulation or order of the board, but the judge of the chancery court to which the appeal is taken may award a writ of supersedeas to any rule, regulation or order of the board after five (5) days' notice to the board and after hearing. Any order or judgment staying the operation of any rule, regulation or order of the board shall contain a specific finding, based upon evidence submitted to the chancery judge and identified by reference thereto, that great or irreparable damage would result to the appellant if he is denied relief, and the stay shall not become effective until a supersedeas bond shall have been executed and filed with and approved by the clerk of the court or the chancery judge, payable to the state. The bond shall be in an amount fixed by the chancery judge and conditioned as said chancery judge may direct in the order granting the supersedeas.

Appeals of rules, regulations or orders of the board pending in the circuit court prior to July 1, 1988, shall proceed in the circuit court having jurisdiction under the appropriate statutes and rules applicable to such cases in the circuit courts. Appeals of rules, regulations or orders of the board on or after July 1, 1988, shall be perfected in the appropriate chancery court and shall proceed under the statutes and rules applicable to such cases in the chancery courts.

SOURCES: Codes, 1942, § 6132-24; Laws, 1948, ch. 256, § 12a, b; Laws, 1958, ch. 185, § 2a, b; Reenacted without change, Laws, 1982, ch. 485, § 20; amd, Laws, 1984, ch. 380, § 1; Laws, 1988, ch. 431, § 3; Reenacted, Laws, 1990, ch. 357, § 20; Reenacted without change, Laws, 1991, ch. 340, § 20, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Appointment of shorthand reporter by State Oil and Gas Board, see § 53-1-19.

Court review of order of Oil and Gas Board by appeal to the chancery court, see § 53-3-119.

JUDICIAL DECISIONS

1. In general.
2. Improper filing of notice.

1. In general.

Judicial review may be had of any final rule, regulation, or order of the State Oil & Gas Board. Prior to an appeal from a final rule, regulation, or order, as contemplated by § 53-1-39(a), the Chancery Court has no jurisdiction to participate in the administrative process and it was error to do so when the effect amounted to an intervention in the pending proceedings. State Oil & Gas Bd. v. McGowan, 542 So. 2d 244 (Miss. 1989).

Since the board has the duty to require that gas or oil pools be separately produced and not commingled, an order of the board amending field rules and redefining gas pools in a part of a particular field so as to recognize the existence of two separate pools, was not arbitrary or so unreasonable as to invalidate it. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

The standard for judicial review of the orders of the state oil and gas board is whether the order is supported by substantial evidence, is arbitrary or capricious, beyond the power of the board to make, or violates some constitutional right of the complaining party. Superior Oil Co. v. State Oil & Gas Bd., 220 So. 2d 602 (Miss. 1969).

Order of state oil and gas board that proceedings on integration petition be stayed until chancery suits involving question of title had been finally settled was not a final order but merely an order of continuance and no appeal therefrom was permissible. Proctor v. Hassie Hunt Trust, 215 Miss. 119, 60 So. 2d 558 (1952).

Where an integration order has been reversed because 20 acres of non-contiguous land was included in the 320 acre drilling unit, the reversal was without prejudice to the right of any party in interest in the 300 acres to institute any further proceedings to obtain order of integration of lands and leases in the unit, although there would be no interest in the non-contiguous 20 acres erroneously included or in the 20 acres necessary to be substituted. Superior Oil Co. v. Griffith, 214 Miss. 891, 60 So. 2d 505 (1952).

2. Improper filing of notice.

Erroneous filing of a timely notice of appeal seeking review of a decision of the

Mississippi Oil and Gas Board adopting a rule regarding disposal of waste from gas production sites containing radioactive material directly with the chancery court having jurisdiction over the action rather than with the Board did not deprive the chancery court of jurisdiction to consider the appeal; appellate court applied the analogous provisions of Miss. R. App. 4 to find that the filing was sufficient to confer jurisdiction on the chancery court. Adams v. Miss. State Oil & Gas Bd., 854 So. 2d 7 (Miss. Ct. App. 2003), remanded by 80 So. 3d 869, 2012 Miss. App. LEXIS 96 (Miss. Ct. App. 2012).

RESEARCH REFERENCES

Law Reviews. 1989 Mississippi Supreme Court Review: Administrative Procedure. 59 Miss. L. J. 797, Winter, 1989.

1984 Mississippi Supreme Court Review: Property. 55 Miss L. J. 135, March, 1985.

§ 53-1-41. Restraining orders, injunctions against board.

(a) No temporary restraining order or injunction of any kind shall be granted against the board, or against any agent, employee or representative of said board restraining the board, or any of its agents, employees or representatives, from enforcing any statute of this state relating to conservation of oil and gas, or any of the provisions of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, or any rule, regulation or order made thereunder, except after due notice to said board, and to all other defendants, and after a hearing at which it shall be clearly shown to the court that the act done or threatened is without sanction of law, or that the provision of law, or the rule, regulation or order complained of, is invalid, and that, if enforced against the complainant, will cause an irreparable injury. With respect to any order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of the aforesaid sections, or of any rule, regulation or order thereunder involved in such suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(b) No temporary injunction, or temporary restraining order of any kind against the board, or its agents, employees or representatives, shall become effective until the complainant shall execute a bond in such amount and upon such conditions as the court may direct.

SOURCES: Codes, 1942, § 6132-25; Laws, 1948, ch. 256, § 12c, d; Laws, 1958, ch. 185, § 2c, d; Reenacted without change, Laws, 1982, ch. 485, § 21; Reenacted, Laws, 1990, ch. 357, § 21; Reenacted without change, Laws, 1991, ch. 340, § 21, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 290.

12 Am. Jur. Pl & Pr Forms (Rev), Gas and Oil, Form 13 (Complaint or declara-

tion to annul and enjoin enforcement of order of regulatory commission that common purchaser buy oil without discrimination as between fields).

Law Reviews. 1989 Mississippi Supreme Court Review: Administrative Procedure. 59 Miss. L. J. 797, Winter, 1989.

§ 53-1-43. Suits to restrain violations or threatened violations; lien remedy.

(a) Whenever it shall appear that any person is violating or threatening to violate any statute of this state with respect to the conservation of oil and gas, or any provision of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, or any rule, regulation or order made by the board thereunder, and fails or refuses to cease such violation or threats of violation on notice so to do, by the board or supervisor, the board may bring suit against such person in the chancery court in the county of the residence of the defendant, or in the county of the residence of any defendant, if there be more than one (1) defendant, or in the county where the violation is alleged to have occurred or is threatened, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the board may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of any illegal oil, illegal gas, illegal condensate, or illegal product.

(b) In the event the board should fail to bring suit within ten (10) days to enjoin any actual or threatened violation of any statute of this state with respect to the conservation of oil and gas, or of any provision of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, or of any rule, regulation or order made thereunder, then any person or party in interest adversely affected by such violation, and who has notified the board in writing of such violation, or threat thereof, and has requested the board to sue, may, to prevent any or further violation, bring suit for that purpose in the chancery court of any county in which the board could have brought suit, and the board shall be made a party to such suit.

(c) The board may utilize the provisions of Section 85-7-132, Mississippi Code of 1972, in prosecuting violations of Sections 53-1-1 through 53-1-47 and Sections 53-3-1 through 53-3-21, or any rule, regulation or order made by the board thereunder.

SOURCES: Codes, 1942, § 6132-26; Laws, 1948, ch. 256, § 13; Reenacted without change, Laws, 1982, ch. 485, § 22; Reenacted, Laws, 1990, ch. 357, § 22. Reenacted without change, Laws, 1991, ch. 340, § 22; Laws, 1997, ch. 482, § 2, eff from and after passage (approved March 27, 1997).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 290.

12 Am. Jur. Pl & Pr Forms (Rev), Gas and Oil, Form 12 (Complaint or declaration to annul order granting drilling permit on adjacent land in violation of conservation laws and spacing rules and to enjoin drilling), Form 16 (Judgment annulling administrative order granting drilling permit and enjoining further drilling or production thereunder).

§ 53-1-45. Appeals to Supreme Court.

An appeal may be taken, in accordance with the General Laws of the State of Mississippi relating to appeals, from any judgment of the circuit court or decree of any chancery court in any appeal proceeding brought under authority of this section; and such appeal, when docketed in the Supreme Court, shall be placed on the preference docket of such court, and may be advanced as such court may direct.

SOURCES: Codes, 1942, § 6132-27; Laws, 1948, ch. 256, § 14; Reenacted without change, Laws, 1982, ch. 485, § 23; Reenacted, Laws, 1990, ch. 357, § 23; Reenacted without change, Laws, 1991, ch. 340, § 23, eff from and after passage (approved March 11, 1991).

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

JUDICIAL DECISIONS

1. In general.

In an appeal from oil and gas board's integration order, the authority of the supreme court is either to affirm the order or reverse it for further proceedings, but the supreme court has no power to modify the order. Superior Oil Co. v. Griffith, 214 Miss. 891, 60 So. 2d 505 (1952).

§ 53-1-47. Penalty for violations.

(a)(i) Any person, who, for the purpose of evading the provisions of Sections 53-1-1 through 53-1-47, inclusive, or any rule, regulation or order made thereunder, shall make or cause to be made any false entry, statement of fact or omission in any report required by such sections or by any rule, regulation or order thereunder or in any account, record or memorandum kept in connection with the provisions thereof or who, for such purpose, shall mutilate, alter, conceal or falsify any such report, account, record or memorandum, shall be subject to a penalty of not more than Ten Thousand Dollars ($10,000.00) per day for each day of such violation to be assessed by the board. In determining the amount of the penalty, the board shall consider the factors specified in subsection (d) of this section. Such penalties shall be assessed according to the procedures set forth in subsection (b) of this section.

(ii) Any person, who, for the purpose of evading the provisions of Sections 53-1-1 through 53-1-47, inclusive, or any rule, regulation or order made thereunder, shall intentionally make or cause to be made any false entry, statement of fact or omission in any report required by said sections or by any rule, regulation or order thereunder or in any account, record or memorandum kept in connection with the provisions thereof or who, for such purpose, shall mutilate, alter, conceal or falsify any such report, account, record or memorandum shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or imprisonment for a term of not less than ten (10) days nor more than six (6) months for each such violation, or both such fine and imprisonment.

(b) Any person who violates any provision of Sections 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-33, and 53-3-39 through 53-3-165, or any lawful rule, regulation or order of the board made hereunder, shall, in addition to any penalty for such violation that is otherwise provided for herein, be subject to a penalty of not to exceed Ten Thousand Dollars ($10,000.00) per day for each day of such violation to be assessed by the board. When any charge is filed with the board charging any person with any such violation, the board shall conduct an adjudicative proceeding in accordance with the Administrative Procedures Law. Such proceeding shall be held by not less than three (3) members of the board and a unanimous verdict of all members hearing such charge shall be necessary for conviction and in the event of a conviction all members of the board hearing such cause must agree on the penalty assessed.

Except as otherwise authorized in Section 7-5-39, the Attorney General, by his designated assistant, shall represent the board in all such proceedings. If he represents the board, the Attorney General shall also designate a member of his staff to present evidence and proof of such violation in the event such charge is contested.

All penalties assessed by the board under the provisions of this section shall have the force and effect of a judgment of the circuit court and shall be enrolled in the office of the circuit clerk and execution may be issued thereon. All such penalties paid or collected shall be paid to the State Treasurer for credit to the Special Oil and Gas Board Fund.

Any person adjudged guilty of any such violation shall have the right of appeal in accordance with the provisions of Section 53-1-39.

The payment of any penalty as provided herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition or the transportation, refining, processing or handling in any other way of such illegal oil, illegal gas or illegal product.

(c) Any person who aids or abets any other person in the violation of any provision of Sections 53-1-1 through 53-1-47, inclusive, or Sections 53-3-1 through 53-3-21, inclusive, or any rule, regulation or order made thereunder, shall be subject to the same penalties as are prescribed herein for the violation by such other person.

(d) In determining the amount of the penalty under subsection (a), (b) or (c) of this section, the board shall consider at a minimum the following factors:

(i) The willfulness of the violation;

(ii) Any damage to water, land or other natural resources of the state or their users;

(iii) Any cost of restoration and abatement;

(iv) Any economic benefit to the violator as a result of noncompliance;

(v) The seriousness of the violation, including any harm to the environment and any harm to the health and safety of the public; and

(vi) Any prior violation by such violator.

(e) The board is authorized to utilize the provisions of Section 85-7-132 to enforce penalties provided by this section.

SOURCES: Codes, 1942, § 6132-28; Laws, 1948, ch. 256, § 15; Laws, 1982, ch. 485, § 24; Laws, 1989, ch. 570, § 1; Reenacted, Laws, 1990, ch. 357, § 24; Reenacted without change, Laws, 1991, ch. 340, § 24; Laws, 1997, ch. 482, § 3; Laws, 2007, ch. 325, § 2; Laws, 2012, ch. 546, § 22, eff from and after July 1, 2012.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Applicability of § 53-1-47 concerning violations by a producer or operator of an oil or gas well as to reports, etc., see §§ 53-3-35, 53-3-37.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

Jurisdiction of the Oil and Gas Board extended to the landowners' fraud claims asserting that oil company misled the landowners, the public, and the Oil and Gas Board; this was because judicial resolution of those claims would require a jury to determine whether the oil company misrepresented information to the board in violation of the board's reporting requirements; the board had to be given the chance to investigate and to penalize the oil company for any false reporting that occurred. Town of Bolton v. Chevron Oil Co., 919 So. 2d 1101 (Miss. Ct. App. 2005).

In an action seeking damages to property caused by the disposal of oil field waste upon it, a cause of action for negligence per se was properly dismissed for failure to exhaust administrative remedies; the plaintiff could have and should have filed a written request for hearing with the Oil and Gas Board as an "interested person," and the board could have penalized the defendants and required them all to pay the costs of clean-up and restoration. Donald v. Amoco Prod. Co., 735 So. 2d 161 (Miss. 1999).

ADMINISTRATION EXPENSE TAX

SEC.	
53-1-71.	Definitions for Sections 53-1-73 through 53-1-77.
53-1-73.	Charge imposed to pay for administration expenses; funding of agency expenses; deposit of monies into State General Fund.

53-1-75. Persons liable.
53-1-77. Oil and gas conservation fund; use of excess funds to plug orphan oil or gas wells; emergency plugging fund; funding of agency expenses; deposit of monies into State General Fund.

§ 53-1-71. Definitions for Sections 53-1-73 through 53-1-77.

As used in Sections 53-1-73 through 53-1-77:

The term "barrel of oil" shall be forty-two (42) United States standard gallons corrected to sixty (60) degrees Fahrenheit and all measurements for volume shall be in one hundred percent (100%) strappings.

"Cubic foot of gas" shall be that volume of gas which occupies one (1) cubic foot of space at a pressure of ten (10) ounces above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch corrected to sixty (60) degrees Fahrenheit flowing temperature.

The term "person" shall mean any individual, corporation, partnership, association, or any state, municipality, political subdivision of any state, or any agency, department or instrumentality of the United States, or any other entity, or any officer, agent or employee of any of the above.

In addition to the customary meaning of oil, the term "oil" shall include any type of salvaged crude oil which, after any treatment, becomes marketable.

SOURCES: Codes, 1942, § 6132-44; Laws, 1948, ch. 318, § 4; Reenacted without change, Laws, 1982, ch. 485, § 25; Laws, 1983, ch. 503, § 2; Reenacted, Laws, 1990, ch. 357, § 25; Reenacted without change, Laws, 1991, ch. 340, § 25; Laws, 2009, ch. 443, § 4, eff from and after July 1, 2009.

JUDICIAL DECISIONS

1. School districts.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 53-1-73. Charge imposed to pay for administration expenses; funding of agency expenses; deposit of monies into State General Fund.

For the purposes of paying the costs and expenses incurred in connection with the administration and enforcement of the oil and gas conservation laws of the State of Mississippi and of the rules, regulations and orders of the State Oil and Gas Board, there is hereby levied and assessed against each barrel of oil produced in the State of Mississippi a charge not to exceed sixty (60) mills on each barrel of such oil sold, and against each one thousand (1,000) cubic feet of gas produced and sold a charge not to exceed six (6) mills on each one thousand (1,000) cubic feet of gas. The State Oil and Gas Board shall fix the amount of such charge in the first instances, and may, from time to time, change, reduce or increase the amount thereof, as in its judgment the charges against the fund may require, but the amounts fixed by said board shall not exceed the limits hereinabove prescribed; and it shall be the duty of the board to make collection of such assessments. All monies collected shall be used exclusively to pay the expenses and other costs in connection with the functioning of the State Oil and Gas Board and the administration of the oil and gas conservation laws of the State of Mississippi now in force or hereafter enacted and the rules, regulations and orders of said board.

From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Codes, 1942, § 6132-41; Laws, 1948, ch. 318, § 1; Laws, 1972, ch. 482, § 1; Laws, 1975, ch. 342; Laws, 1980, ch. 525; Laws, 1982, ch. 485, § 26; Laws, 1983, ch. 473; Reenacted and amended, Laws, 1990, ch. 357, § 26; Reenacted without change, Laws, 1991, ch. 340, § 26; Laws, 1997, ch. 543, § 1; Laws, 2007, ch. 363, § 3; Laws, 2009, ch. 443, § 5; Laws, 2016, ch. 459, § 40, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.'"

Amendment Notes — The 2016 amendment added the last two paragraphs.

Cross References — Privilege tax on oil severed or produced in Mississippi, see § 27-25-501 et seq.

Privilege tax on natural gas severed or produced in Mississippi, see § 27-25-701 et seq.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

JUDICIAL DECISIONS

1. Liability for administrative fees.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. §§ 53-1-73 and 53-1-77, the State Oil and Gas Board Supervisor is authorized to expend funds from the Oil and Gas Conservation Fund to purchase a data management system determined to be needed by the Board to perform its duties, and thereafter to transfer funds from the Emergency Plugging Fund to the Oil and Gas Conservation Fund if the Oil and Gas Conservation Fund Surplus is less than $200,000. Ivshin, March 9, 2007, A.G. Op. #07-00100, 2007 Miss. AG LEXIS 99.

§ 53-1-75. Persons liable.

The persons owning an interest (working interest, royalty interest, payments out of production or any other interest) in the oil or gas subject to the charge provided in Section 53-1-73 shall be liable for the charge in proportion to their ownership at the time of production. The charge assessed and fixed in Section 53-1-73 shall be payable monthly on a well by well basis, and the persons required to remit the charge shall remit the sum due to the board on or before the twenty-fifth day of the month next following the month in which the production is sold out of which the assessment arises; the remittance shall comply with any rules and regulations which may be adopted by the board in regard thereto.

Remittances with respect to all production against which any assessment hereunder is levied shall be made by the following persons:

(a) With respect to assessments against oil or gas purchased in this state at the well under any contract or agreement requiring payment for such production to the respective persons owning any interest therein (including working interests, royalty interests, payments out of production or any other interests in such production), by the person purchasing such production.

(b) With respect to any oil, or gas purchased in this state at the well without any contract or agreement requiring payment for such production to respective persons owning an interest therein, and with respect to any oil or gas produced from any well but not sold at that well, by the operator of the well from which the production is obtained.

The persons remitting the charge required in this section are hereby authorized, empowered and required to deduct from any amounts due the persons owning an interest in the oil or gas at the time of production the proportionate amount of the charge before making payment to such owners.

SOURCES: Codes, 1942, § 6132-42; Laws, 1948, ch. 318, § 2; Reenacted without change, Laws, 1982, ch. 485, § 27; Reenacted, Laws, 1990, ch. 357, § 27; Reenacted without change, Laws, 1991, ch. 340, § 27; Laws, 2007, ch. 363, § 4, eff from and after July 1, 2007.

JUDICIAL DECISIONS

1. School districts.

Under Miss. Code Ann. §§ 53-1-73 and 53-1-75, a school district was liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land because the assessments were fees rather than taxes, Miss. Code Ann. § 53-1-71 expressly made the state and its subdivisions subject to the fees, and no constitutional provision or other law was violated by requiring school districts to pay the fees. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 53-1-77. Oil and gas conservation fund; use of excess funds to plug orphan oil or gas wells; emergency plugging fund; funding of agency expenses; deposit of monies into State General Fund.

(1) The State Oil and Gas Supervisor, as ex officio secretary of such board, shall remit to the State Treasurer all monies collected by reason of the assessments made and fixed under the provisions of Section 53-1-73, and the State Treasurer shall deposit all such monies in a special fund known as the "Oil and Gas Conservation Fund," which is hereby continued in effect.

(2) All monies on deposit in the Oil and Gas Conservation Fund on April 10, 1948, and all monies hereafter deposited in such fund, shall be held in trust for the use of the board to pay the expenses and costs incurred in connection with the administration and enforcement of the oil and gas conservation laws of the State of Mississippi and the rules, regulations and orders of the State Oil and Gas Board issued thereunder. Disbursements shall be made from such fund only upon requisition of the State Oil and Gas Supervisor, as approved and allowed by the board, and which requisitions shall be supported by itemized statements thereto attached showing the purpose or purposes of such expenditures. Such requisitions shall be drawn upon the State Auditor, who shall issue a warrant upon said fund. Such warrants so issued shall be paid by the State Treasurer upon presentation.

(3) The State Oil and Gas Supervisor, as ex officio secretary of the Oil and Gas Board, shall submit, within ten (10) days, after the convening of each session of the Legislature, to the Legislature a detailed report of all receipts, expenditures and balance on hand, of funds coming to the Oil and Gas Board from any source whatsoever.

(4) In the event that at any particular time, the Oil and Gas Conservation Fund contains an amount greater than Two Hundred Thousand Dollars ($200,000.00) more than the current fiscal year's estimated budget, the amount of the excess may be used by the board and at the board's discretion, to plug any oil or gas well, including any Class II well, in the state which has been determined by the board to represent an imminent threat to the environment and which has been determined by the board to be an "orphan" well.

(5) The board shall have the authority, in its discretion, to use whatever legal means available to it to attempt to collect any amounts so expended from

any responsible party. Any amounts so collected shall be returned to the Oil and Gas Board's Emergency Plugging Fund created herein.

(6) Amounts of surplus in the Oil and Gas Conservation Fund of over Two Hundred Thousand Dollars ($200,000.00) shall be transferred to a separate special fund of the Oil and Gas Board to be known as the Emergency Plugging Fund, for the proper plugging of wells pursuant to this section. The supervisor shall have the authority, and it shall be his duty to transfer any amounts in the Emergency Plugging Fund back to the Oil and Gas Conservation Fund in the event and to the extent to which the Oil and Gas Conservation Fund should at any time contain less than a Two Hundred Thousand Dollars ($200,000.00) surplus.

(7) For purposes of this section, orphan well means any oil or gas well in the state, including Class II wells, which has not been properly plugged according to the requirements of the statutes, rules and regulations governing same and for which a responsible party such as an owner or operator cannot be located or for which, for whatever reason, there is no other party which can be forced to plug the well.

(8) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(9) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Codes, 1942, § 6132-43; Laws, 1948, ch. 318, § 3; Reenacted without change, Laws, 1982, ch. 485, § 28; Reenacted, Laws, 1990, ch. 357, § 28; Reenacted without change, Laws, 1991, ch. 340, § 28; Laws, 1991, ch. 344 § 2; Laws, 2016, ch. 459, § 37, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides: "SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.'"

Amendment Notes — The 2016 amendment added (8) and (9).

Cross References — Transfer of functions of state auditor to Executive Director of the Department of Finance and Administration, see § 7-7-2.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Ann. §§ 53-1-73 and 53-1-77, the State Oil and Gas Board Supervisor is authorized to expend funds from the Oil and Gas Conservation Fund to purchase a data management system determined to be needed by the Board to perform its duties, and thereafter to transfer funds from the Emergency Plugging Fund to the Oil and Gas Conservation Fund if the Oil and Gas Conservation

Fund Surplus is less than $200,000. Ivshin, March 9, 2007, A.G. Op. #07-00100, 2007 Miss. AG LEXIS 99.

CONTRIBUTIONS TO INTERSTATE OIL COMPACT COMMISSION

SEC.
53-1-101. Authority to contribute to interstate oil compact commission.

§ 53-1-101. Authority to contribute to interstate oil compact commission.

The State Oil and Gas Board may pay annually out of the funds of the board the annual membership dues payable to the Interstate Oil Compact Commission for the membership of the State of Mississippi in that organization. The State Oil and Gas Board may pay the reasonable and necessary travel expenses incurred by the members and staff of the State Oil and Gas Board and by the designee appointed by the Governor to the Interstate Oil Compact Commission for travel to meetings of the commission to the extent those expenses are payable by law.

SOURCES: Laws, 1950, ch. 217 § 1; Laws, 1977, ch. 378; Reenacted without change, Laws, 1982, ch. 485, § 29; Reenacted, Laws, 1990, ch. 357, § 29; Reenacted without change, Laws, 1991, ch. 340, § 29; Laws, 1997, ch. 347, § 1, eff from and after July 1, 1997.

PROVISION FOR REPEAL OF CHAPTER [REPEALED]

SEC.
53-1-201. Repealed.

§ 53-1-201. Repealed.

Repealed by Laws, 1991, ch. 340, § 31, eff from and after passage (approved March 11, 1991).

[Laws 1979, ch. 301, § 54; Laws, 1982, ch. 485, § 30; Laws, 1990, ch. 357, § 30, eff from and after January 1, 1991.].

Editor's Note — Former § 53-1-201 provided for the repeal of §§ 53-1-1 through 53-1-47, 53-1-71 through 53-1-77, and 53-1-101.

CHAPTER 3

Development, Production and Distribution of Gas and Oil

In General 53-3-1
Cooperative Development and Operation Under Leases 53-3-51
Facilities for Exploration, Production, or Transportation of Oil or Gas in Navigable Waters 53-3-71
Unitization of Oil and Gas Fields and Pools 53-3-101
Underground Storage of Natural Gas or Compressed Air 53-3-151
Transportation of Crude Oil 53-3-201

IN GENERAL

Sec.
53-3-1. Definitions for certain sections.
53-3-3. Waste unlawful.
53-3-5. Drilling and production regulated.
53-3-7. Integration of interests; pooling agreements and orders.
53-3-9. Allowable production; meters.
53-3-11. Well drilling notice; permit; surety or cash bond for nonresidents; Secretary of State as service agent for nonresidents; taxpayer notice for new wells; board spacing pattern requirements.
53-3-13. Permit fee; disposition of fees; funding of agency expenses; deposit of monies into State General Fund.
53-3-15. Certificate of compliance required before connection with pipe lines; cancellation.
53-3-17. Illegal transactions.
53-3-19. Procedure for seizure and sale of illegal gas and oil as contraband.
53-3-21. Penalties for violations of Sections 53-3-3 through 53-3-19.
53-3-23. Flexible oil or gas drilling units.
53-3-25. Application for permit to drill in search of oil or gas.
53-3-27. Application to commence drilling of stratigraphic test or well below freshwater level; duration of permit.
53-3-29. Application to commence drilling injection well; duration of permit.
53-3-31. Application to rework abandoned well to injection well; duration of permit.
53-3-33. Application to rework operating well or injection well.
53-3-35. Reports by producer or operator of oil or gas well; monthly individual well status report; producer's monthly report; deliverability test; calibrated stock tank.
53-3-37. Penalties for violations concerning reports.
53-3-39. Payment of interest on royalty proceeds which have not been disbursed.
53-3-41. Definitions.

§ 53-3-1. Definitions for certain sections.

Unless the context otherwise requires, words and terms appearing in Sections 53-3-3 through 53-3-21, inclusive, shall have the meaning attributed to them in Section 53-1-3.

SOURCES: No history available for this section.

Cross References — Penalties for violation of §§ 53-1-1 through 53-1-47, 53-3-1 through 53-3-33, and 53-3-39 through 53-3-165, see § 53-1-47.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Liability of discovery well to restrictions of §§ 53-3-1 through 53-3-21, see § 53-1-17.

Mississippi Mineral Resources Institute, see § 57-55-9.

RESEARCH REFERENCES

ALR. Gas and oil lease force majeure provisions: construction and effect. 46 A.L.R.4th 976.

Am Jur. 9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:1 et seq.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

§ 53-3-3. Waste unlawful.

Waste of oil or gas as defined in Section 53-1-3 is hereby made unlawful.

SOURCES: Codes, 1942, § 6132-09; Laws, 1932, ch. 117; Laws, 1948, ch. 256, § 5.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Penalties for violations of Sections 53-3-3 to 53-3-19, see § 53-3-21.

JUDICIAL DECISIONS

1. Disposal.

Amended State Oil and Gas Board Rule 68 was not in contravention of Miss. Code Ann. § 53-3-3 because contestants did not cite any particular violation or allege that they exhausted their remedies with the Mississippi Oil and Gas Board by filing charges there; when read in conjunction with the other definitions of "waste," it is clear the rule is concerned with the inappropriate production of oil and gas. Adams v. Miss. State Oil & Gas Bd., 139 So. 3d 58 (Miss. 2014).

§ 53-3-5. Drilling and production regulated.

(a) The state oil and gas board shall have the power and authority and it shall be its duty, after due notice and a hearing, to regulate the drilling and location of wells in any pool and the production therefrom so as to prevent reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counterdrainage) so that each owner in a pool shall have the right and opportunity to recover his fair and equitable share of the recoverable oil and gas in such pool.

(b) For the prevention of waste, to protect and enforce the correlative rights of the owners in a pool, and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, or the reduced recovery which might result from too small a number of wells, the board shall, after a hearing, establish a drilling unit or units for each pool. The establishment of a unit for gas shall be limited and apply only to the production of gas and not oil.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled in accordance with the rules and regulations promulgated by the board and in accordance with a spacing pattern fixed by the board for the pool in which the well is located with such exceptions as may be reasonably necessary where it is shown, after notice and upon hearing, that the unit is partly outside the pool or, for some other reason, a well otherwise located on the unit would be nonproductive, or topographical conditions are such as to make the drilling at such location unduly burdensome. Whenever an exception is granted, the board shall take such action as will offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, but no well drilled and completed as an exception to prescribed footage limitations for the reason that a portion of the drilling unit upon which such well is located is partly outside the pool or productive horizon shall be allocated a reduced daily production allowable whenever it shall be demonstrated to the satisfaction of the board that the productive acreage underlying such drilling unit is equal to, or more than, the reasonable minimum amount of productive acreage which would underlie such drilling unit under the minimum conditions which would permit the drilling of a well thereon so located as to comply with all applicable footage limitations. Each well drilled and completed as an exception to prescribed footage limitations for the reason that a portion of such drilling unit is partly outside the pool or productive horizon shall be allocated a reduced daily production allowable whenever it cannot be demonstrated to the satisfaction of the board that the productive acreage underlying such drilling unit is equal to, or more than, the minimum amount of productive acreage which would underlie such drilling unit under the minimum conditions which would permit the drilling of a well thereon so located as to comply with all applicable footage limitations. Such reduced allowable shall be allocated in proportion to the relationship which the productive acreage, as determined by the board, bears to the reasonable minimum amount of productive acreage which would underlie such drilling unit under the minimum conditions which would permit the drilling of a well thereon so located as to comply with all footage limitations applicable to such drilling unit. The reasonable minimum amount of productive acreage shall be determined for all purposes as if each oil well drilling unit were a regular governmental quarter-quarter section, comprising forty acres, more or less, and as if each gas well drilling unit were a regular governmental one half section, comprising three hundred twenty acres, more or less, and shall be calculated for the purpose of each oil well drilling unit as being the total acreage which would be encompassed within a triangular shaped area bounded on two sides by the exterior boundaries of such forty-acre drilling unit meeting at a 90° angle corner and on the third side by a straight line running on a 45° angle through a location point situated at the minimum distance out of such corner as shall be in accordance with prescribed oil well drilling unit footage limitations and intersecting each of such two exterior boundaries at 45° angles, and shall be calculated for the purposes of each gas well drilling unit as being the total acreage which would be encompassed within a triangular shaped area bounded on two sides by the exterior boundaries of such three hundred twenty-acre drilling unit meeting at a 90° angle corner and on the third side by a straight line running on a 45° angle through a location point situated at the minimum distance out of such corner as shall be in accordance with prescribed gas well drilling unit footage limitations and intersecting each of such two exterior boundaries at 45° angles. Should drilling units for any field or area be established so as to permit the drilling of oil or gas wells on smaller or larger units than 40 acre or 320 acre drilling units then, in such event, the same method of determining the reasonable minimum amount of productive acreage shall be applied to the consideration of such oil or gas drilling units with respect to the size of, and the prescribed footage limitations applicable to, such drilling units.

(d) Except where otherwise provided, any allocation or apportionment of production shall be made on the basis of and in proportion to the surface acreage content of the drilling units prescribed for the producing horizons for the pools so that each such prescribed unit shall have equal opportunity to produce the same daily allowable, and any special unit of less than the prescribed amount of surface acreage shall be allowed to produce only in the proportion that the surface acreage content of any such special unit bears to the surface acreage content of the regular prescribed unit. In the event any well in attempting to make its allowable should be operated in a way that would commit waste as herein defined, or to the detriment of the field as a whole, the allowable for any such well shall be subject to adjustment.

SOURCES: Codes, 1942, § 6132-21; Laws, 1948, ch. 256, § 9; Laws, 1956, ch. 164, § 1.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

JUDICIAL DECISIONS

1. In general.

"Net drainage" and "counter-drainage" within subsection (a) of this section [Code 1942, § 6132-21] preventing net drainage should be applied to each separate developed unit as established by the order of the oil and gas board. Shell Oil Co. v. James, 257 So. 2d 488 (Miss. 1971).

Where the evidence supported a finding that there was a substantial amount of oil under the property owned by the lessors which oil was being drained by the lessee's well or adjacent property belonging to another surface owner, the lessees did not act in good faith and were liable to the lessors for such drainage when they refused to drill an offset well which would have been permitted by the oil and gas board, or dropped their lease on the lessor's property as required by an implied covenant in the lease, even though the lessors had a 50 percent participation in the existing well on the adjacent property. Shell Oil Co. v. James, 257 So. 2d 488 (Miss. 1971).

Oil and gas board's refusal to amend rule so as to allocate permissible production on the basis of productivity of each well instead of upon a surface acreage basis, sustained. Barnwell, Inc. v. Sun Oil Co., 249 Miss. 398, 162 So. 2d 635 (1964).

Spacing rules, which required that rights of all owners in drilling unit upon which the walls were located should first be pooled and which defined term owner as person having right to drill into pool and to appropriate production therefrom, were reasonable exercises of police powers of state delegated to the oil and gas board by the 1932 and 1936 statutes. Superior Oil Co. v. Beery, 216 Miss. 664, 64 So. 2d 357 (1953).

Where surface acreage had been adopted as basis for apportionment of oil production in each drilling unit, the oil and gas board properly based order on acreage basis and not on claim of certain owners that sands underlying the lands were thicker and contained more hydrocarbons than the adjoining lands in the same unit for which reason they asserted their lands are more productive and consequently the order of integration should allocate to their acreage and each unit a larger proportion of the production from each unit well than that which should be allocated to the other lands comprising the unit. Humble Oil & Ref. Co. v. Welborn, 216 Miss. 180, 62 So. 2d 211 (1953).

ATTORNEY GENERAL OPINIONS

Municipal governing authorities have the power to enact zoning regulations, consistent with the comprehensive plan for the municipality, which restrict the location of certain industries, such as the drilling of oil and gas wells, to specific zones within the municipality; ordinances which prohibit drilling in a particular location will be upheld only if they bear a reasonable relationship to protecting the public health, safety, morals, or general welfare. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

RESEARCH REFERENCES

ALR. Oil and gas as "minerals" within deed, lease, or license. 37 A.L.R.2d 1440.

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 144 et seq., 172 et seq.

CJS. 58 C.J.S., Mines and Minerals §§ 270 et seq.

Law Reviews. 1987 Mississippi Supreme Court Review: The impact of the Transco decision on State regulation of the natural gas industry. 57 Miss. L. J. 85, April 1987.

§ 53-3-7. Integration of interests; pooling agreements and orders.

(1)(a) When two (2) or more separately owned tracts of land are embraced within an established drilling unit or when there are separately owned interests in all or part of an established drilling unit the persons owning the drilling rights therein and the rights to share in the production therefrom may validly agree to integrate their interests and to develop their lands as a drilling unit. Where, however, such persons have not agreed to integrate their interests the board may, for the prevention of waste or to avoid the drilling of unnecessary wells, require such persons to integrate their interests and to develop their lands as a drilling unit. All orders requiring such pooling shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense.

The portion of the production allocated to the owner of each tract included in a drilling unit formed by a pooling order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

(b) Except as otherwise provided for in this section, in the event such pooling is required, the cost of development and operation of the pooled unit chargeable by the operator to the other interested owner or owners shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable including a reasonable charge for supervision. In the event that the operator elects to proceed under the provisions of this subsection (1)(b), and does not elect to seek alternate charges as provided for in this section, the notice procedure followed shall be in accordance with Section 53-1-21, Mississippi Code of 1972.

(c) For the purposes of this section, as to a drilling unit, the term "nonconsenting owner" shall mean an owner of drilling rights which the owner has not agreed, in writing, to integrate in the drilling unit. The owner may own other drilling rights in the unit which the owner has agreed, in writing, to integrate in the unit and thereby also be a "consenting owner" as to the interest which the owner has agreed to integrate in the unit.

(2)(a) In the event that one or more owners owning not less than thirty-three percent (33%) of the drilling rights in a drilling unit voluntarily consent to the drilling of a unit well thereon, and the operator has made a good faith effort to (i) negotiate with each nonconsenting owner to have said owner's interest voluntarily integrated into the unit, (ii) notify each nonconsenting owner of the names of all owners of drilling rights who have agreed to integrate any interests in the unit, (iii) ascertain the address of each nonconsenting owner, (iv) give each nonconsenting owner written notice of the proposed operation, specifying the work to be performed, the location, proposed depth, objective formation and the estimated cost of the proposed operation, and (v) offer each nonconsenting owner the opportunity to lease or farm out on reasonable terms or to participate in the cost and risk of developing and operating the unit well involved on reasonable terms, by agreeing in writing, then the operator may petition the board to allow it to charge alternate charges (alternate to and in lieu of the charges provided for in subsection (1)(b) of this section).

(b) Any such petition on which alternate charges may be ordered by the board shall include a statement which shall name all nonconsenting real parties in interest in said proposed drilling unit, as of a date not more than ninety (90) days prior to the filing of the petition, giving each such person's name, and address if known; and if any owner's address is not known, the operator shall state in its petition that such person's address is unknown after diligent search and inquiry. Only those parties served with actual or constructive notice as set forth hereinbelow will be subject to any alternate charges allowed by the board.

(c) Upon the filing of a petition on which alternate charges may be ordered, the petitioner shall have prepared, and furnish to the board with said petition, a notice to each and all nonconsenting real parties in interest whose address is unknown, whether such person be a resident of the State of Mississippi or not, which the board shall have published, noticing each such person to appear before a regular meeting of the board sufficiently distant in time to allow thirty (30) days to elapse between the date of the last publication of said notice as hereinafter provided, and the date of the regular meeting of the board to which each such person is noticed. Said notice shall also notice all unknown heirs or devisees of deceased owners, if any there be, and all unknown persons owning drilling rights in said proposed drilling unit. The notice shall be substantially in the following form, to wit:

NOTICE TO APPEAR BEFORE THE STATE OIL AND GAS BOARD

You are noticed to appear before the State Oil and Gas Board at its regular ________ term, being on the ________ day of ________, 20________ to show cause if you can why the petition of ____

____

(Operator)

being Petition No. ________ in said board and seeking to force to integrate and pool all interests in (description of Unit by legal description) ________________

____ should not be granted.

To ________ (inserting the name of such person or persons, whose address is unknown), and all such unknown heirs or devisees and all such unknown owners, whose names and addresses remain unknown after diligent search and inquiry.

Said meeting of said board shall be held at ________ (the then hearing room of said Oil and Gas Board) on the above date at ________.

(the time)

This ________ day of ________, A.D.________.

____

supervisor

(d) The publication of notice to nonconsenting real parties in interest whose address is unknown after diligent search and inquiry shall be made once in each week during three (3) successive weeks in a public newspaper of the county or counties in which the proposed drilling unit is located, if there be such a newspaper. If there is not such a county newspaper, then the said publication of notice shall be published in a newspaper having general circulation in the State of Mississippi. The period of publication shall be deemed to be completed at the end of twenty-one (21) days from the date of the first publication, provided there have been three (3) publications made as hereinabove required.

(e) Upon the filing of a petition on which alternate charges may be ordered, the petitioner shall also have prepared, and shall furnish to the board, a notice which shall be substantially in the form set out above, to each nonconsenting real party in interest whose address is known, together with addressed and stamped envelopes, and the board shall mail each notice by certified mail, return receipt requested, sufficiently distant in time to allow thirty (30) days to elapse between the date of the mailing of said notice and the date of the regular meeting of the board at which said petition will be first scheduled to be heard.

(f) Petitioner shall also advance to the board at the time of the filing of said petition the cost of publication and mailing of notices as set out above which shall be established by the board. Said costs of publication and mailing of notices shall be considered as part of the costs of operation which are chargeable to the nonconsenting owner's nonconsenting share of production as set forth in paragraph (g) of this subsection (2).

(g) In the event a pooling order is issued by the board, and any nonconsenting owner does not subsequently agree in writing as provided for herein, and if the operations on the existing or proposed well which are described in the pooling order are actually commenced within one (1) year after the pooling order is issued by the board, and thereafter with due diligence and without undue delay, the existing or proposed well is actually completed as a well capable of producing oil, gas and/or other minerals in quantities sufficient to yield a return in excess of monthly operating costs, then, subject to the limitations set out in this section, the operator and/or the appropriate consenting owners shall be entitled to receive as alternate charges (alternate to and in lieu of the charges provided for in subsection (1)(b) of this section; provided, however, that in no event shall the operator and/or the appropriate consenting owners be entitled to recover less than such charges provided in subsection (1)(b) of this section) the share of production from the well attributable to the nonconsenting owner's nonconsenting interests in the unit established or subsequently reformed for production therefrom, until the point in time when the proceeds from the sale of such share, calculated at the well, or the market value thereof if such share is not sold, after deducting production and excise taxes, which operator will pay or cause to be paid, and the payment required by this paragraph (g) shall equal the sum of:

(i) One hundred percent (100%) of the nonconsenting owner's nonconsenting share of the cost of any newly acquired surface equipment beyond the wellhead connections including, but not limited to, stock tanks, separators, treaters, pumping equipment and piping; and

(ii) Two hundred fifty percent (250%) of that portion of the costs and expenses of the operations provided for in the pooling order, and two hundred fifty percent (250%) of that portion of the cost of newly acquired equipment in the well, including wellhead connections, which would have been chargeable to the nonconsenting owner's nonconsenting share thereof; provided, however, when a mineral interest that is severed from the surface estate is owned by a nonconsenting owner or when a mineral interest is subject to an oil and gas lease that is owned by a nonconsenting owner, the payment under this subparagraph (ii) shall be three hundred percent (300%); and

(iii) One hundred percent (100%) of the nonconsenting owner's nonconsenting share of the cost of operation of the well commencing with first production and continuing to such point in time.

Whenever a drilling unit established by a pooling order issued by the board under subsection (2) of this section is to be reformed or altered by the board for good cause, after notice and hearing, then the interest of any nonconsenting owner listed in the pooling order who received notice of the application to reform or alter the unit and had not agreed in writing as provided for herein shall remain subject to the charges set forth in this subsection (2)(g) with respect to its interest in the reformed or altered unit. If there is any nonconsenting owner within a proposed reformed or altered unit who has not been previously provided the information and offers set forth in subparagraphs (ii) through (v) of subsection (2)(a) of this section which was sent to the owners, and if the applicant for an order of reformation or alteration of such unit provides to the nonconsenting owner the information and offers set forth in subparagraphs (ii) through (v) of subsection (2)(a) of this section at the same time and in the same manner as such nonconsenting owners receive notice of the application to reform or alter the drilling unit, then the interest of any nonconsenting owner listed in the pooling order for the reformed or altered unit who does not agree in writing as provided for herein shall be subject to the charges set forth in this subsection (2)(g) with respect to its interest in the reformed or altered unit.

Whenever any one (1) operator has filed for alternate charges on two (2) drilling units, which units are direct, partially direct or diagonal offsets one to the other, such operator may not file a petition for alternate charges, as distinguished from the charges provided by subsection (1)(b), as to any additional units which are direct, partially direct or diagonal offsets to the said first two (2) units of that operator until said operator has drilled, tested and completed the first two (2) such wells, as wells capable of production or completed as dry holes or either, and has filed completion reports on said first two (2) wells with the board, or the permits for such well or wells have expired if one or both of them be not drilled.

The pooling order if issued shall provide that each nonconsenting owner shall be afforded the opportunity to participate in the development and operation of the well in the pooled unit as to all or any part of said owner's interest on the same costs basis as the consenting owners by agreeing in writing to pay that part of the costs of such development and operation chargeable to said nonconsenting owner's interest, or to enter into such other written agreement with the operator as the parties may contract, provided such acceptance in writing is filed with the board within twenty (20) days after the pooling order is filed for record with the board.

The pooling order shall provide that the well be drilled on a competitive contract, arms length, basis; provided, however, that the operator may employ its own tools or those of affiliates, but charges therefor shall not exceed the prevailing rates in the area.

(h) Within sixty (60) days after the completion of any operation on which alternate charges have been ordered, the operator shall furnish any nonconsenting owner who may request same an inventory of the equipment in and connected to the well, and an itemized statement of the cost of drilling, deepening, plugging back, testing, completing and equipping the well for production; or, at its option, the operator, in lieu of an itemized statement of such costs of operation, may submit detailed monthly statements of said costs. Each month thereafter, during the time the operator and/or consenting parties are being reimbursed, the operator shall furnish any nonconsenting owner who may request same with an itemized statement of all costs and liabilities incurred in the operation of the well, together with a statement of the quantity of oil and gas produced from it and the amount of proceeds realized from the sale of the well's production during the preceding month. Any amount realized from the sale or other disposition of equipment acquired in connection with any such operation which would have been owned by a nonconsenting owner had it participated therein as to its nonconsenting interest shall be credited against the total unreturned costs of the work done and of the equipment purchased in determining when the interest of such nonconsenting owner shall be owned by said nonconsenting owner as above provided; and if there is a credit balance, it shall be paid to such nonconsenting owner. From the point in time provided for in paragraph (g) of this subsection (2), each nonconsenting owner shall own the same interest in such well, the material and equipment in or pertaining thereto, and the production therefrom as such nonconsenting owner would have been entitled to had it participated in the drilling, reworking, deepening and/or plugging back of said well. Thereafter, except as otherwise provided in this section, the operator shall be entitled to charge each nonconsenting owner such nonconsenting owner's proportionate part of all reasonable costs incurred by the operator in operating the unit well and the unit, including a reasonable charge for supervision, and in the event such nonconsenting owner fails to pay such proportionate share of such costs within thirty (30) days after receipt by the nonconsenting owner of a valid invoice, the operator shall be entitled to receive such nonconsenting owner's share of production until such time as such unpaid share of costs shall have been recovered by the operator.

(i) In the event that a leased interest is subject to an order of pooling and integration, and the operator and/or the appropriate consenting owners are entitled to alternate charges as provided by paragraph (g) of this subsection (2), and if there be no reasonable question as to good and merchantable title to the royalty interest, the lessor of said lease shall be paid, by the operator or purchaser of production, the proceeds attributable to said lessor's contracted royalty, not to exceed an amount of three-sixteenths (3/16) of the proceeds attributable to the nonconsenting owner's proportionate share of production. Nothing herein contained shall affect or diminish in any way the responsibility of the nonconsenting owner to account for the payment of any royalty or other payment, not paid as herein provided, which may burden or be attributable to the interest owned by such nonconsenting owner.

(3) When production of oil or gas is not secured in paying quantities as a result of such integration or pooling of interests, there shall be no charge

payable by the nonconsenting owner or owners as to such owner's nonconsenting interest.

(4) In the event of any dispute relative to costs, the board shall determine the proper costs, after due notice to all interested parties and a hearing thereon. Appeals may be taken from such determination as from any other order of the board.

(5) The State Oil and Gas Board shall in all instances where a unit has been formed out of lands or areas of more than one (1) ownership, require the operator when so requested by an owner, to deliver to such owner or his assigns his proportionate share of the production from the well common to such drilling unit; but where necessary, such owner receiving same shall provide at his own expense proper receptacles for the receipt or storage of such oil, gas or distillate.

(6) Should the persons owning the drilling or other rights in separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the board is without authority to require integration as provided in this section, then, subject to all other applicable provisions of this chapter, and of Chapter 1 of this title, the owner of each tract embraced within the drilling unit may drill on his tract; but the allowable production from such tract shall be such proportion of the allowable production for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(7) The State Oil and Gas Board in order to prevent waste and avoid the drilling of unnecessary wells may permit (i) the cycling of gas in any pool or portion thereof or (ii) the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring such reservoir, maintaining pressure or carrying on secondary recovery operations. The board shall permit the pooling or integration of separate tracts or separately owned interests when reasonably necessary in connection with such operations.

(8) Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among such owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the board, are hereby authorized and shall not be held or construed to violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade.

SOURCES: Codes, 1942, § 6132-22; Laws, 1948, ch. 256, § 10; Laws, 1950, ch. 220, § 3; Laws, 1984, ch. 511, § 1; Laws, 1987, ch. 417; Laws, 2014, ch. 392, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in paragraph (c) in subsection (2). The words "to show cause if any you can" were changed to "to show cause if you can," the blank line with "(the time)" underneath it was deleted following the phrase "should not be granted," the phrase "on the above" was moved to precede "date," and "(the time)" was moved underneath the blank line following the phrase "date at." The Joint Committee ratified the corrections at its May 20, 1998, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a date line in the form located in (2)(c). The number "20" was substituted for "19" in the text of the notice form so that "on the __________ day of __________, 19 ________ ..." now reads "on the __________ day of __________, 20 ________ ...." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Editor's Note — Laws of 1984, ch. 511, § 2, provides as follows:

"SECTION 2. This act shall not affect any drilling units formed prior to the effective date of this act under Section 53-3-7, Mississippi Code of 1972, as previously written, and this act shall not abrogate or amend any contracts in existence prior to the effective date of this act."

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Application for permit to drill in search of oil or gas, see § 53-3-25.

Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to this section, see § 75-58-5.

Rights and liabilities under Natural Gas Marketing Act of owners of wells in fields or pools unitized pursuant to this section, see § 75-58-9.

JUDICIAL DECISIONS

1. Validity.
2. Pooling agreements—In general.
3. —Establishment of Pool.
4. —Forced pooling.
5. —Extension of lease term.
6. Review.
7. Miscellaneous.

1. Validity.

This section [Code 1942, § 6132-22] giving the state oil and gas board power to require pooling is within police power of the state and is constitutionally valid. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

Where the circuit court reversed an order of the state oil and gas board integrating all interest in gas under lands in two drilling units as authorized by statute, and where on appeal it was argued that the statute and order violated due process and the impairment of contract clause of the state and federal constitution, the supreme court must decide the question of constitutionality of statute although the judgment was not based on any constitutional grounds. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

2. Pooling agreements—In general.

The board may prescribe different size units for a pool. Corley v. Mississippi State Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

Owners of one-fourth nonparticipating royalty interests in mineral lease land did not have the right to pool and combine acreage nor did they have the right to amend lease so as to affect or modify interest or rights of lessors. Humble Oil & Ref. Co. v. Hutchins, 217 Miss. 636, 64 So. 2d 733 (1953), suggestion of error sustained in part, overruled in part, 217 Miss. 636, 65 So. 2d 824 (1953).

3. —Establishment of Pool.

Where lessee's designated gas well drilling unit contained only 315.9 acres, instead of 320 acres as required by gas well spacing rule in effect at time of attempted creation of gas well, but, under proper description of land involved in such unit, lessees designated unit and executed operating agreement, oil and gas board issued permit to drill on unit and granted production allowables, wells were completed, and plan of unit, certificate of pooling by lessees, and completion report were filed, a de facto unit was established. Superior Oil Co. v. Magee, 227 Miss. 868, 87 So. 2d 280 (1956).

When the lessees in the unit had pooled their interests, the plat of the unit had been filed with the board, the operator of the unit had applied for and obtained a well permit and completed a well on the units and the board had set allowable production for the unit, the gas unit was then legally established. Humble Oil & Ref. Co. v. Hutchins, 217 Miss. 636, 64 So. 2d 733 (1953), suggestion of error sustained in part, overruled in part, 217 Miss. 636, 65 So. 2d 824 (1953).

Where gas drilling units were located and fixed on the ground by lessees then having the exclusive right to drill on those lands, and these actions were approved on numerous occasions by the state oil and gas board, by the issuance of permits, approval of plats, monthly allowable orders for nearly three years and approval of joint operating agreements of the lessees, these units were established within the terms of the condition precedent stated in this section. [Code 1942, § 6132-22]. Green v. Superior Oil Co., 59 So. 2d 100 (Miss. 1952).

4. —Forced pooling.

Property owner became eligible to participate in a proposed oil and gas well on the same costs basis as the consenting owners because the owner acted in the manner and within the time frame prescribed by Miss. Code Ann. § 53-3-7, tendered a check to the operator in the amount of its proportionate share of the dry-hole costs for drilling the well, and agreed in writing to advance its share of the completion costs to the operator. Tellus Operating Group, LLC v. Maxwell Energy, Inc., — So. 3d —, 2013 Miss. App. LEXIS 594 (Miss. Ct. App. Sept. 17, 2013), opinion withdrawn by, substituted opinion at 156 So. 3d 333, 2014 Miss. App. LEXIS 209 (Miss. Ct. App. 2014).

When the drilling unit for a well is "force-integrated" under the statute, the well operator may recover from a non-consenting owner only those costs of development or production that are (1) actually incurred, (2) necessary, and (3) reasonable. TXG Intrastate Pipeline Co. v. Grossnickle, 716 So. 2d 991 (Miss. 1997).

When owners of mineral interest sued operator of oil well in state court, well operator did not commit conversion by not properly determining amount of oil taken from integrated wells; since developer had followed proper procedures under integration statute prior to commencing operations, developer was cotenant of owners and owed them no more than an accounting; conversion claim included vague conclusory charges that operator committed unauthorized act of dominion over plaintiffs' proportionate share of oil from the land, and inasmuch as operator adhered to § 53-3-7 there was no question that operator had right to produce the well on condition that it account to plaintiffs for their proportionate shares of production therefrom, less development and production expenses. Mills v. Damson Oil Corp., 931 F.2d 346 (5th Cir. 1991).

The protections afforded by § 53-3-7(1)(a) to a non-consenting interest owner are not necessarily afforded to an operator. In contrast to the non-consenting interest owner, who is an unwilling participant, the operator of the unit has made a deliberate choice to drill. Wright v. State Oil & Gas Bd., 532 So. 2d 567 (Miss. 1988).

Section 53-3-7 permits only the recovery of the necessary expenses of development and operation of a forcibly pooled drilling unit. Interest expense (the cost of money) is one step removed from the "cost of development and operation" and, therefore, is not recoverable under the statute. Pursue Energy Corp. v. State Oil & Gas Bd., 524 So. 2d 569 (Miss. 1988).

Under Mississippi law, mineral owner whose interest is force integrated is not liable for pro rata share of drilling expenses in unproductive well, absent agreement to share expenses. Huffco Petro. Corp. v. Massey, 834 F.2d 540 (5th Cir. 1987).

Issuance of forced-pooling or unitization order by State Oil and Gas Board, pursuant to § 53-3-7, and drilling thereunder within unit, had effect of continuing oil, gas, and mineral leases on all lands located inside unit, notwithstanding plaintiff-lessors' contention that cancellation of leases is in order because (1) leases require lessees to commence operation within primary term, (2) neither lessee did, and (3) drilling done by Board-designated operators could not inure to lessees' advantage. Tri M Petro. Co. v. Getty Oil Co., 792 F.2d 558 (5th Cir. 1986).

Where separately owned tracts of land existed within a proposed drilling unit, and where the owners of these separate tracts failed to agree to the formation of the unit, force-pooling them under this section required notice and hearing prior to the administrative awarding of a drilling permit; since this was not done when the application for the permit was made, the Oil and Gas Board's cancellation of the drilling permit was justified and was not arbitrary or capricious. Damson Oil Corp. v. Southeastern Oil Co., 370 So. 2d 225 (Miss. 1979).

The board had power within the statute to deny a petition for forced integration by the exercise of reasonable discretion with respect to questions of prevention of waste and avoiding drilling of unnecessary wells. State Oil & Gas Bd. v. Brinkley, 329 So. 2d 512 (Miss. 1976).

This section [Code 1942, § 6132-22] authorizes state oil and gas board to order compulsory pooling after as well as before drilling of wells and commencement of production. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

5. —Extension of lease term.

The drilling of a productive well within a pooled unit and on a part of the land covered by the lease binds that part of the leased lands lying outside of said unit for a term as long thereafter as the unit well produces. Wells v. Continental Oil Co., 244 Miss. 509, 142 So. 2d 215 (1962).

Where drilling unit has been properly established, production from any of the land in the unit extends the oil and gas leases upon all lands in unit insofar as such leases cover the unitized tracts. Superior Oil Co. v. Magee, 227 Miss. 868, 87 So. 2d 280 (1956).

When a drilling unit has been legally established, and there is production therefrom, so that a mineral lessor of land within the unit is entitled to receive his share of production, the primary term of the lease is thereby extended, even though the lessor has refused to agree to pooling of his interest, and the unit well is not on his land. Humble Oil & Ref. Co. v. Hutchins, 217 Miss. 636, 64 So. 2d 733 (1953), suggestion of error sustained in part, overruled in part, 217 Miss. 636, 65 So. 2d 824 (1953).

Where lessee claimed the right to pool leased land by virtue of a lease amendment which contained a pooling agreement, and which also contained a statement that production from acreage covered by lease and in a pooled unit shall not be considered as production from covered acreage, not including the pooled unit, the lessor was bound by the terms of the amendment and production from leased land within units did not serve to extend primary term of lease as to covered acreage outside of these units. Humble Oil & Ref. Co. v. Hutchins, 217 Miss. 636, 64 So. 2d 733 (1953), suggestion of error sustained in part, overruled in part, 217 Miss. 636, 65 So. 2d 824 (1953).

6. Review.

A prior adjudication by the supreme court in reviewing an integration order to the effect that the gas unit has been validly and legally established, was res judicata on issue in subsequent proceedings where it was contended that production from the unit wells should not extend primary term of all leases pooled, because these units have not been legally established. Superior Oil Co. v. Foote, 216 Miss. 728, 64 So. 2d 355 (1953).

Where an order of state oil and gas board integrated all mineral interests in land in certain gas drilling, on appeal from judgment stating the order, the supreme court had no power to adjudicate the effect of the order upon the property rights of appellant regardless of its importance to them, but would merely uphold the order without considering the question of title. Hutchins v. Humble Oil & Ref. Co., 59 So. 2d 103 (Miss. 1952).

7. Miscellaneous.

State Compulsory Field Wide Unitization Act, embodied in § 53-3-111, did not divide oil and gas leases on tract of land owned by drilling operators who obtained voluntary field wide drilling and production unit status under § 53-3-7. Palmer Exploration, Inc. v. Dennis, 730 F. Supp. 734 (S.D. Miss. 1989), aff'd, 896 F.2d 552 (5th Cir. 1990).

Where an order of state oil and gas board provided that integration should be in such manner and to such effect as if all owners of interests in gas drilling units involved voluntarily acquiesced in and consented to the integration, that provision was not authorized by the statute and could be construed as contradictory of the board's disavowal of any intent to pass upon title questions, however, it was harmless surplusage since its meaning is limited to statement that interests of appellees in oil and gas lessees' proceeding for such integration were subject to integration order, whether their interests are subject or not subject to leases. Superior Oil Co. v. Foote, 214 Miss. 857, 59 So. 2d 85, 37 A.L.R.2d 415 (1952), error overruled 214 Miss. 857, 59 So. 2d 844 (Miss. 1952).

RESEARCH REFERENCES

ALR. Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like. 37 A.L.R.2d 434.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 172 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Gas and Oil, Form 14 (Allegation of complaint or declaration in action to compel unitization that drilling operations should be integrated for prevention of waste).

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 53-3-9. Allowable production; meters.

(a) Whenever the state oil and gas board has fixed for the purpose of preventing waste, as defined in Section 53-1-3, the total amount of oil or gas which may be produced in any pool in this state at an amount less than that amount which the pool can produce, the board shall allocate or apportion the allowable production among the producers in the pool on a reasonable basis so as to prevent reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage, and so that each producer will have the opportunity to produce or receive his just and equitable share, as above set forth.

(b) After the effective date of any rule, regulation, or order of the state oil and gas board fixing the allowable production of oil or gas, or both, for any pool, no person shall produce from any well, lease, or property more than the allowable production which is applicable; nor shall such amount be produced in a different manner than that which may be authorized.

(c) The state oil and gas board shall require interested persons, firms or corporations to place uniform meters of a type approved by the board wherever the board may designate on all pipe lines, flow lines, gathering systems, barge terminals, loading racks, refineries, or other places deemed necessary or proper to prevent waste and the transportation of illegally produced oil or gas; such meters at all times shall be under the supervision and control of the board, and it shall be a violation of Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, for any person, firm or corporation to refuse to attach or install such meter when ordered to do so by the board.

SOURCES: Codes, 1942, § 6132-23; Laws, 1948, ch. 256, § 11.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Exemption of petroleum products meters under supervision of State Oil and Gas Board from the Weights and Measures Law, see § 75-27-3.

JUDICIAL DECISIONS

1. In general.

The board may prescribe different size units for a pool. Corley v. Mississippi State Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

Allocation may be made on an acreage basis irrespective of productive capacity of underlying sands, and including acreage upon which there are no wells. Corley v. Mississippi State Oil & Gas Bd., 234 Miss. 199, 105 So. 2d 633 (1958).

§ 53-3-11. Well drilling notice; permit; surety or cash bond for nonresidents; Secretary of State as service agent for nonresidents; taxpayer notice for new wells; board spacing pattern requirements.

(1) Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall notify the oil and gas supervisor upon such form as the board may prescribe. The drilling of any well for oil or gas is hereby prohibited until such notice is given and a permit therefor is issued.

(2)(a) Before any nonresident not qualified to do business in this state is issued a permit pursuant to subsection (1) of this section, such nonresident shall file with the Secretary of State, on a form prescribed by him, a surety or cash bond in a sum of not less than Ten Thousand Dollars ($10,000.00), or in a greater amount if so approved by the Secretary of State, conditioned that such sum be paid to the State of Mississippi for the benefit of all persons interested, their legal representatives, attorneys or assigns, in the event the operator of such well shall fail to reasonably restore the land and improvements of the surface estate as a result of mineral exploration and/or production, or in the event the operator shall fail to properly plug a dry or abandoned well in the manner prescribed by the rules of the board. Such bond shall be executed by the operator listed in the drilling permit and, in case of a surety bond, by a corporate surety licensed to do business in the State of Mississippi. Such bond shall cover all subsequent drilling permits issued to such nonresident operator and shall be for a term co-extensive with the terms of the permits.

(b) The Secretary of State is hereby designated as the agent upon whom process may be served in any action against such nonresident operator to recover damages to the surface estate arising from mineral exploration and/or production. Any such action for damages shall be commenced within six (6) years next after the closing of the well.

(3) A person issued a permit to drill an oil or gas well under this section is required to provide notice of the intended drill site location prior to commencing operations. The notice shall be sent by United States certified mail to the taxpayer shown on the most recent county ad valorem tax receipt available in the office of the tax collector of the county in which the well site is located, and shall be posted to the mailing address shown on that ad valorem tax receipt. The notice shall include a copy of the unit plat showing the proposed well location. The notification requirement of this subsection (3) shall apply only to permits to drill new wells and shall not apply to well reentries, recompletions or reworking operations on existing or previously permitted wells. Failure to give the notice provided for in this subsection (3) shall not invalidate the well permit.

(4) The drilling of any well, which is not in accordance with a spacing pattern fixed by the board, is hereby prohibited until and unless a permit is issued by the board after notice and hearing.

SOURCES: Codes, 1942, § 6132-29; Laws, 1948, ch. 256, § 16; Laws, 1983, ch. 439; Laws, 1998, ch. 335, § 1, eff from and after July 1, 1998.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Permit fee; disposition of fees relating to the development, production and distribution of gas and oil, see § 53-3-13.

ATTORNEY GENERAL OPINIONS

A town is precluded from requiring those who seek to drill for oil within the corporate limits of the municipality from obtaining a municipal permit for that purpose. Thach, Apr. 23, 2001, A.G. Op. #01-0221.

§ 53-3-13. Permit fee; disposition of fees; funding of agency expenses; deposit of monies into State General Fund.

(1) Any person securing a permit to drill a well in search of oil or gas under the provisions of Section 53-3-11 shall pay to the Oil and Gas Supervisor a fee of Six Hundred Dollars ($600.00) upon and for the issuance of the permit. A lesser sum may be paid if the State Oil and Gas Board shall adopt a rule fixing the amount to be paid at a sum less than Six Hundred Dollars ($600.00). Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed. In the event a change of operators from that listed in the drilling permit is desired, the operator listed and the proposed new operator shall apply to the State Oil and Gas Board for authority to change operators on forms to be prescribed by order of the State Oil and Gas Board. The fee for such

change of operators shall be One Hundred Dollars ($100.00) per change, or some lesser sum as may be fixed by order of the board.

(2) The State Oil and Gas Supervisor, as ex officio Secretary of the State Oil and Gas Board, shall remit to the State Treasurer all monies collected by reason of the assessments made, fixed and authorized under the provisions of subsection (1) of this section, and the State Treasurer shall deposit all such monies in a special fund known as the "Oil and Gas Conservation Fund."

(3) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Codes, 1942, § 6132-30; Laws, 1948, ch. 319, §§ 1, 2; Laws, 1966, ch. 280, § 1; Laws, 1977, ch. 487; Laws, 1978, ch. 520, § 14; Laws, 1982, ch. 485, § 31; Laws, 2007, ch. 363, § 1; Laws, 2016, ch. 459, § 41, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added (3) and (4).

Cross References — Duties of State Treasurer generally, see § 7-9-9.

Duty of state officers to pay into State Treasury twice monthly all funds collected or received, see § 7-9-21.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

Oil and gas conservation fund, see § 53-1-77.

§ 53-3-15. Certificate of compliance required before connection with pipe lines; cancellation.

Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the state oil and gas board a certificate showing compliance with the conservation laws of the state and conservation rules, regulations and orders of the board. No operator of a pipe line shall connect with any well until the owner or operator of such well shall furnish a certificate from the board that such conservation laws and such rules, regulations and orders have been complied with. This section shall not prevent a temporary connection of not more than seven days' duration with any well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of such well to secure such certificate.

The state oil and gas board shall have the power to cancel any certificate of compliance issued under the provisions of this section when it appears, after due notice and hearing, that the owner or operator of a well covered by the provisions of same has violated or is violating, in connection with the operation of said well or the production of oil or gas therefrom, any of the oil or gas conservation laws of this state or any of the rules, regulations or orders of the board promulgated thereunder. Upon notice from the board to the operator of any pipe line connected to any such oil or gas well that the certificate of compliance with reference to such well has been cancelled by the board, the operator of such pipe line shall disconnect from such well and it shall be unlawful for the operator of such pipe line to transport oil or gas therefrom until a new certificate of compliance has been issued by the board. It shall be unlawful for the owner or operator of any well to produce oil or gas therefrom (except as to a temporary connection as hereinabove provided), unless there is in effect a certificate of compliance covering such well.

SOURCES: Codes, 1942, § 6132-31; Laws, 1948, ch. 256, § 17.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-3-17. Illegal transactions.

The sale, purchase, or acquisition, or the transportation, refining, processing, or handling in any other way of illegal oil, illegal gas, or illegal product is hereby prohibited.

Unless and until the state oil and gas board provides for certificates of clearance, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase, or acquisition, or of transportation, refining, processing, or handling in any other way, involves illegal oil, illegal gas, or illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of illegal oil, illegal gas, or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed by the board for each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas, or illegal product is involved in such transaction or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in Section 53-1-47 shall apply to any sale, purchase, or acquisition, and to the transportation, refining, processing, or handling in any other way, without a certificate of clearance, of illegal oil, illegal gas, or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase, or acquire, or to transport, refine, process, or handle in any other way any oil, gas or any product without complying with any rule, regulation, or order of the board relating thereto.

SOURCES: Codes, 1942, § 6132-32; Laws, 1948, ch. 256, § 18.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

§ 53-3-19. Procedure for seizure and sale of illegal gas and oil as contraband.

Apart from, and in addition to, any other remedy or procedure which may be available to the state oil and gas board, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the board believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for that purpose in the circuit court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within thirty days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the state. A copy of the summons shall also be published once each week for three weeks in some newspaper published in the county where the suit is pending or having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, that grounds for the seizure and sale exist, the clerk, in addition to the summons, shall issue an order of seizure, which shall be signed by the clerk and bear the seal of the court. Such order of seizure shall specifically describe the illegal oil, illegal gas, or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said order of seizure shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such order of seizure, and the sheriff shall be responsible upon his official bond for the proper execution thereof. For his service hereunder, the sheriff shall receive a fee as in like cases of seizure of personal property and to be assessed as other cost in the cause.

Sales of illegal oil, illegal gas or illegal product, seized under the authority of this section, and notice of such sales, shall be in accordance with the laws of this state relating to the sale of personal property under execution. For his services hereunder the sheriff shall receive a fee and expenses in like sales of personal property to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the act which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the state oil and gas fund, after first deducting the costs in connection with the proceedings and sale, and after paying to any royalty owner intervening as an interested party in the suit, the value of his interest in the said oil or gas, provided he has established his title to the said oil or gas royalty interest. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

The producer, owner, or any other party contesting the validity of any such seizure and having an interest in securing the release of the seized oil, gas or other product, may obtain the release thereof upon furnishing a bond issued by a corporate surety company, duly qualified to do business in the state in an amount double the current market value of the oil, gas or other product held under seizure, which bond shall be conditioned and approved in the same manner as a replevin bond.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. All oil, gas or other illegal product sold as provided in this section shall be sold in like cases of personal property sold under execution.

SOURCES: Codes, 1942, § 6132-33; Laws, 1948, ch. 256, § 19.

Cross References — Sales of personal property under execution generally, see §§ 13-3-161, 13-3-165, 13-3-169.

Sheriffs' fees generally, see § 25-7-19.

Powers and duties of State Oil and Gas Board, see § 53-1-17.

RESEARCH REFERENCES

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Joinder of Claims and Parties-Rules 19-25. 52 Miss. L. J. 81, March 1982.

§ 53-3-21. Penalties for violations of Sections 53-3-3 through 53-3-19.

Any person who violates any of the provisions of Sections 53-3-3 through 53-3-19, inclusive, or any rule, regulation or order made thereunder, shall be subject to the penalties and punishment set forth in Section 53-1-47.

SOURCES: No history available for this section.

Cross References — Powers and duties of State Oil and Gas Board, see § 53-1-17.

Applicability of notice procedures concerning integration of interests, pooling agreements and orders, see § 53-3-7.

§ 53-3-23. Flexible oil or gas drilling units.

(1) Whenever a drilling unit for oil or gas is formed comprised entirely of lands within the State of Mississippi, with one or more unit boundaries being the center of the main navigable channel of the Mississippi River or any other navigable river constituting the boundary between the State of Mississippi and another state, such unit shall be a flexible unit. The size and shape of such unit shall change as the boundary line between the states changes.

(2) Subsequent changes in the acreage content of such unit occasioned by the shifting of the state boundary line shall not occasion a reduction in the allowable acreage allocated to such unit.

(3) This section shall cover and include oil and gas units which have been heretofore formed or which may be hereafter formed.

SOURCES: Codes, 1942, § 6132-23.5; Laws, 1958, ch. 186, §§ 1-4.

Cross References — A definition of term "navigable waters", see § 1-3-31.

§ 53-3-25. Application for permit to drill in search of oil or gas.

Before any person shall commence the drilling of any well in search of oil or gas, the person shall file with the board his application for a permit to drill, accompanied by a certified plat and by a fee of Six Hundred Dollars ($600.00), payable to the State Oil and Gas Board. When two (2) or more separately owned tracts of land are embraced within the unit for which the permit is sought, the application shall affirmatively state whether there are separately owned tracts in the drilling unit for which the permit is sought, and if so, whether the person owning the drilling rights therein and the rights to share in the production therefrom have agreed to develop their lands as a drilling unit and to the drilling of the well, as contemplated by Section 53-3-7. If drilling operations have not commenced within one (1) year after date of issuance, the permit shall become void. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued promptly by the supervisor. The issuance of the permit shall constitute the establishment of the drilling unit as designated in the application and shall likewise constitute the approval of the well location set out in the permit. On good cause shown, the unit may be altered by the board after notice and hearing.

If the application for permit does not comply in all respects with the rules and regulations of the board relating thereto, the application shall be disallowed and the supervisor shall promptly notify the applicant of the reason or reasons for the disallowance.

SOURCES: Laws, 1982, ch. 485, § 32(1); Laws, 2007, ch. 363, § 2, eff from and after July 1, 2007.

§ 53-3-27. Application to commence drilling of stratigraphic test or well below freshwater level; duration of permit.

Before any person shall commence the drilling of a stratigraphic test or any well below the freshwater level (other than an oil or gas well or injection well), such person shall file with the board his application for a permit to drill, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued promptly by the supervisor. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

If the application for a permit does not comply in all respects with the rules and regulations of the board relating thereto, said application shall be disallowed, and the supervisor shall promptly notify the applicant of the reason or reasons for the disallowance.

SOURCES: Laws, 1982, ch. 485, § 32(2); Laws, 1989, ch. 444, § 2; Laws, 2009, ch. 443, § 1, eff from and after July 1, 2009.

§ 53-3-29. Application to commence drilling injection well; duration of permit.

Before any person shall commence the drilling of an injection well, such person shall file with the board his application for a permit to drill, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued by the supervisor upon approval by the State Oil and Gas Board, after notice and hearing. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

SOURCES: Laws, 1982, ch. 485, § 32(3); Laws, 1989, ch. 444, § 3; Laws, 2009, ch. 443, § 2, eff from and after July 1, 2009.

§ 53-3-31. Application to rework abandoned well to injection well; duration of permit.

Before any person shall commence operations to rework an abandoned well to an injection well, such person shall file with the board his application to rework, accompanied by a fee of Six Hundred Dollars ($600.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued by the supervisor upon approval by the State Oil and Gas Board, after notice and hearing. Any such permit, when issued and the fee paid thereon, shall be good for a period of one (1) year from the date thereof; and in the event drilling has commenced within one (1) year, the permit shall be good for the life of the well commenced, unless during the course of drilling or production the operator is changed.

SOURCES: Laws, 1982, ch. 485, § 32(4); Laws, 1989, ch. 444, § 4; Laws, 2009, ch. 443, § 3, eff from and after July 1, 2009.

§ 53-3-33. Application to rework operating well or injection well.

Before any person shall commence operations to rework an operating well or injection well to recomplete to another zone, formation or reservoir, such person shall file with the board his application to rework, accompanied by a fee of One Hundred Dollars ($100.00), or some lesser sum as may be fixed by order of the board, payable to the State Oil and Gas Board. If the application complies in all respects with the rules and regulations of the board relating thereto, a permit shall be issued by the supervisor.

SOURCES: Laws, 1982, ch. 485, § 32(5); Laws, 1984; ch 376 1989, ch. 444, § 5, eff from and after passage (approved March 24, 1989).

§ 53-3-35. Reports by producer or operator of oil or gas well; monthly individual well status report; producer's monthly report; deliverability test; calibrated stock tank.

(1) Each producer or operator of an oil or gas well shall furnish for each month a "monthly individual well status report," setting forth complete information and data indicated thereon. Such report for each month shall be prepared and filed according to the instructions on a form published by the board for such reports, on or before the first day of the second month following the month during which the production was made.

(2) Each operator or producer of oil or gas shall furnish for each month a "producer's monthly report," setting forth complete information and data indicated thereon. Such report for each month shall be prepared and filed with the board on a form published by the board for such reports, according to the instructions on said form, on or before the first day of the second month following the month during which the production was made.

(3)(a) A deliverability test of each producing gas well shall be made in conformity with schedules issued by the board. Such test shall be an actual test to determine whether or not the well is capable of producing efficiently any allowable that may reasonably be expected to be assigned to it, and, if the well is not found to be capable, then the test shall determine the maximum rate at which the well may efficiently be produced. The method of testing used shall be one acceptable to the board. A report of each test so required shall be promptly furnished to the board on a form published by the board for such reports. Any operator may make such additional deliverability tests at any time and report such tests to the board in the same manner as required tests are reported. Deliverability shall be determined by the latest test information furnished to the board.

(b) Each oil well and each oil completion of a multiply-completed well shall be tested by the operator once during each calendar month during each calendar year in a calibrated stock tank. The result of such tests shall be reported in writing within thirty (30) days after the end of each month to the state oil and gas board on a form published by the board for such test results.

SOURCES: Laws, 1982, ch. 485, § 33(1-3), eff from and after July 1, 1982.

Cross References — Penalties for violations concerning reports, see § 53-3-37.

§ 53-3-37. Penalties for violations concerning reports.

Any person who shall violate any of the provisions of Section 53-3-35 regarding the filing of reports by failing to file such reports on a timely basis, or by the willful, knowing or fraudulent execution of a report which contains a false entry or statement of fact, or an omission of fact, shall be subject to a penalty of not more than One Thousand Dollars ($1,000.00) for each violation.

Provided, however, the same procedure for notice and hearing as that found in subsection (b) of Section 53-1-47 shall be followed in cases of violations of Section 53-3-35.

SOURCES: Laws, 1982, ch. 485, § 33(4); Laws, 1989, ch. 444, § 6, eff from and after passage (approved March 24, 1989).

§ 53-3-39. Payment of interest on royalty proceeds which have not been disbursed.

Purchasers of oil or gas production from any oil or gas well shall be liable for the payment of interest on royalty proceeds which have not been disbursed to the royalty owners from and after one hundred twenty (120) days following the date of the first sale of oil or gas.

The rate of interest shall be eight percent (8%) per annum and shall be computed from the date of one hundred twenty (120) days after such first sale; however, from and after July 1, 1992, the rate of interest shall be the greater of eight percent (8%) per annum or two percent (2%) above the federal discount rate in effect as of the second day of January of each year during which interest on such royalty proceeds is payable, except in those instances where the royalty proceeds cannot be paid because the title thereto is not marketable, in which case the rate of interest on a per annum basis shall be equal to the federal reserve discount rate in effect as of the second day of January of each year during which interest on the royalty proceeds is payable. The accrued interest shall be paid to the royalty owners at the time of the payment of the accrued royalty proceeds, such rate of interest to be displayed on the disbursement document. As used herein, "first sale" shall mean the first commercial sale of production after completion of the well and shall not include sales of oil or gas during initial testing prior to completion of the well.

Whenever the disbursal of royalty proceeds is suspended for any reason whatsoever, the purchasers of production shall be liable for the payment of interest on the royalty proceeds which have been suspended. Except as otherwise provided, the rate of interest shall be eight percent (8%) per annum and shall be computed from the date that the royalty payments were halted or suspended; provided, however, that if such date is less than one hundred twenty (120) days after the first sale of oil or gas, then such interest shall be computed from the date of one hundred twenty (120) days after such first sale. From and after July 1, 1992, the rate of interest shall be the greater of eight percent (8%) per annum or two percent (2%) above the federal discount rate in effect as of the second day of January of each year during which interest on such royalty proceeds is payable, except in those instances where the royalty proceeds are suspended because the title thereto is not marketable, in which case the rate of interest on a per annum basis shall be equal to the federal reserve discount rate in effect as of the second day of January of each year during which interest on such proceeds is payable. The accrued interest shall be paid to the royalty owners at the time of the payment of the suspended royalty proceeds, such rate of interest to be displayed on the disbursement document.

The purchaser of production from a well shall be exempt from the provisions of this section and the operator and/or the owner of the right to drill and to produce under an oil and/or gas lease shall be substituted for the purchaser herein where the operator and/or the owner and purchaser have entered into an arrangement where the royalty proceeds are paid by the purchaser to the operator and/or the owner who assumes responsibility of paying the proceeds to the royalty owners legally entitled thereto. Where the operator and/or the owner of the drilling rights are substituted herein for the purchaser, the interest provided for hereinabove shall accrue from the date set forth hereinabove or from the date of such operator and/or owner's receipt of the proceeds of such production, whichever is the later date.

Provided further, that as to royalty payments regularly disbursed in the normal course of business, nothing in this section shall be construed to require the payment of interest on royalty payments disbursed to the royalty owners no later than sixty (60) days after the end of the calendar month within which such royalty production was sold. Provided further, that whenever the aggregate of one hundred twenty (120) days' accumulation of monthly proceeds payable to any royalty owner does not exceed One Hundred Dollars ($100.00), no interest shall accrue or be payable thereon, provided that the disbursement of such accumulated proceeds be made to the royalty owner no later than once each one-hundred-twenty-day period.

For the purposes of this section, marketability of title shall be determined in accordance with real property law governing title to oil and gas interests as recognized at the time the royalty payments were suspended or not paid.

The provisions of this section which require payment of interest on royalty proceeds which have not been disbursed may not be waived or reduced by a royalty owner entitled to such interest payment unless said royalty owner shall attest to a statement which shall be typed in bold print on a separate form and attached to the relevant division order contract as to the royalty owner's interest. Such statement shall be set out as follows:

I, (royalty owner's name) hereby agree to waive the statutory right given me to receive interest on royalty proceeds as provided by Section 53-3-39, Mississippi Code of 1972, from (purchaser or operator and/or owner of right to drill), which is due me as evidenced from the attached division order contract. This is the ______ day of ______, 20______.

____
(royalty owner's signature)

The words "owner," "oil," "gas" and "royalty owner" used in this section shall have the meanings attributed to them in Section 53-1-3, Mississippi Code of 1972.

SOURCES: Laws, 1983, ch. 477, § 1; Laws, 1985, ch. 373; Laws, 1992, ch. 428, § 1, eff from and after July 1, 1992.

Editor's Note — Laws of 1983, ch. 477, § 2, effective from and after July 1, 1983, provides as follows:

"SECTION 2. This act shall have prospective application only and interest shall accrue hereunder only after the effective date of this act. This act shall take effect and be in force from and after July 1, 1983."

JUDICIAL DECISIONS

1. In general.
2. Royalty owner.

1. In general.

Prejudgment interest is properly assessed pursuant to § 53-3-39 with respect to royalties owed from and after July 1, 1983, regardless of whether or not purchaser acted in bad faith or frivolously. First Nat'l Bank v. Pursue Energy Corp., 799 F.2d 149 (5th Cir. 1986), reh'g denied, 802 F.2d 455 (5th Cir. 1986).

2. Royalty owner.

Under Mississippi law, as determined by Court of Appeals, lessors of mineral interest in gas were not entitled to royalties from nonrecoupable cash settlement of take-or-pay contract dispute between pipeline and lessee, given absence of specific lease language to that effect. Williamson v. Elf Aquitaine, Inc., 138 F.3d 546 (5th Cir. 1998).

Equitable considerations did not apply so as to entitle lessors of mineral interest in gas to royalties from nonrecoupable cash settlement of take-or-pay contract dispute between pipeline and lessee, inasmuch as lessors did not claim to be third-party beneficiaries of take-or-pay contracts, that settlement was in bad faith or less than arms-length transaction, or that, post-settlement, lessee failed to comply with its express marketing obligation under lease. Williamson v. Elf Aquitaine, Inc., 138 F.3d 546 (5th Cir. 1998).

RESEARCH REFERENCES

ALR. Oil and gas royalty as real or personal property. 56 A.L.R.4th 539.

Am Jur. 9 Am. Jur. Legal Forms 2d, Gas and Oil § 129:244.

§ 53-3-41. Definitions.

(1) For the purposes of this section, the following terms shall have the meanings ascribed herein:

(a) "Oil and gas production" means any oil, natural gas, condensate of either, natural gas liquids, other gaseous, liquid or dissolved hydrocarbons, sulfur or helium, or other substance produced as a by-product or adjunct to their production, or any combination of these, which is severed, extracted or produced from the ground, the seabed or other submerged lands within the jurisdiction of the State of Mississippi. Any such substance, including recoverable or recovered natural gas liquids, which is transported to or in a natural gas pipeline or natural gas gathering system, or otherwise transported or sold for use as natural gas, or is transported or sold for the extraction of helium or natural gas liquids is gas production. Any such substance which is transported or sold to persons and for purposes not included in the foregoing natural gas definition is oil production.

(b) "Interest owner" means a person owning an entire or fractional interest of any kind or nature in oil or gas production at the time of severance, or a person who has an express, implied or constructive right to receive a monetary payment determined by the value of oil or gas production or by the amount of production.

(c) "Royalty owner" means any person who possesses an interest in the production, but who is not an owner as defined in Section 53-1-3(g).

(d) "Disbursing agent" shall mean that person who, pursuant to an oil and gas lease, operating agreement, purchase contract, or otherwise, assumes the responsibility of paying royalty proceeds derived from a well's oil and gas production to the royalty owner or owners legally entitled thereto. A first purchaser shall not be deemed to be the disbursing agent unless the first purchaser expressly assumes such responsibility in the purchase contract.

(e) "First purchaser" means the first person who purchases oil or gas production from the interest owners after the production is severed and may include the operator if the operator acts as a purchaser of production attributable to other interest owners.

(f) An "operator" is a person engaged in the business of severing oil or gas production from the ground, whether for himself alone, for other persons alone or for himself and others.

(2) Whenever a disbursing agent has not disbursed the royalty proceeds derived from the well's production to the royalty owner within one hundred twenty (120) days following the date of first sale of oil or gas in the event the disbursing agent is a first purchaser of oil or gas, or within one hundred twenty (120) days following the date the disbursing agent receives the proceeds from such production if the disbursing agent is not the first purchaser, such royalty owner shall have a lien to secure the payment of the royalty proceeds. The lien shall attach to the proceeds from such production received by the disbursing agent attributable to the royalty owner's interest.

(3) The lien provided by this section shall be effective against a third party only from the time a financing statement evidencing such lien is filed in the same manner as financing statements evidencing security interests in minerals are filed in accordance with the provisions of Section 75-9-501.

(4) The lien provided by this section shall expire one (1) year after it becomes effective against a third party, unless judicial proceedings have been commenced to assert it or unless insolvency proceedings have been commenced by or against the disbursing agent, in which event the lien shall remain effective until termination of the insolvency proceedings or until expiration of the one-year period, whichever occurs later.

(5) Whenever there is a conflict between a lien under this section and a security interest under Title 75, Chapter 9, the lien or security interest first to be filed has priority. Liens provided for in this section shall have priorities among themselves according to priority in time of filing of such liens.

(6) The filing required by this section shall be a financing statement as provided for in Section 75-9-310 and shall be subject to the provisions of Part 5 of Article 9 of the Uniform Commercial Code, except that in order for the filing to be sufficient, it shall not be necessary for the debtor to sign the financing statement, and the filing shall be effective for a period of only one (1) year from the date of filing.

(7) This section does not impair an operator's right to set off or withhold funds from other interest owners as security for or in satisfaction of any debt

or security interest. This section does not impair a disbursing agent's right to withhold funds in the event a question is raised concerning the title or ownership of, or right to sell, the oil or gas production. In case of a dispute between interest owners, a good-faith tender by the disbursing agent of funds to the person the interest owners shall agree on, or to a court of competent jurisdiction in the event of litigation or bankruptcy, shall operate as a tender of the funds to both.

(8) Nothing in this section shall be construed to enlarge or diminish the rights and obligations provided to or imposed on interest owners, royalty owners, disbursing agents, first purchasers, or operators by contract or otherwise by law. The sole purpose of this section is to provide royalty owners a lien under the conditions provided herein.

SOURCES: Laws, 1986, ch. 466; Laws, 2001, ch. 495, § 29, eff from and after Jan. 1, 2002.

RESEARCH REFERENCES

Am Jur. 9 Am. Jur. Legal Forms 2d, Gas and Oil § 129:244.

COOPERATIVE DEVELOPMENT AND OPERATION UNDER LEASES

SEC.
53-3-51. Agreements for cooperative development and operation under leases by public officers.

§ 53-3-51. Agreements for cooperative development and operation under leases by public officers.

(1) The state mineral lease commission, the county boards of supervisors, the mayors and boards of aldermen, the mayor and councilmen, the trustees of agricultural high schools and junior colleges, the trustees of any common school districts, consolidated school districts, special consolidated school districts and separate school districts, and all other state boards, state officers, state agents, and the boards and officers of all political subdivisions of the State of Mississippi, who manage and control mineral and royalty interests, and are authorized by law to execute oil, gas or mineral leases thereon, are hereby authorized and empowered to execute, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, agreements covering any lease or leases now in effect or which may hereafter be granted, and the mineral and royalty interests thereunder, for establishing and carrying out the co-operative development and operation of common accumulations of oil and gas, or both, in all or any portion of a field or area which appears from geological or other data to contain such common accumulations of oil or gas, or both, including the right and power to pool, consolidate and unitize the land covered by any lease or leases, now in effect or which may hereafter be granted, in its entirety or as to any stratum or strata or any portion or portions thereof,

with other lands and leases in the immediate vicinity thereof, for the purpose of joint development and operation of the entire consolidated premises as a unit. Such agreements include, but are not limited to, all types of secondary recovery methods and operations, and operations known as cycling, recycling, pressure maintenance, repressuring, and water flooding, and the storage, processing and marketing of gas and all by-products of such operations.

(2) When any mineral or royalty interest belonging to the state, or to any political subdivision or agency thereof, is included within the provisions of such unitization or other agreement, as authorized in subsection (1) hereof, the oil, gas and mineral lease on such interest shall be considered to be amended thereby to conform to such agreement, and such lease shall not terminate as long as the agreement continues in force. No such agreement shall provide for the payment of royalty on any basis which is less favorable to the state, or any such subdivision thereof, than the basis on which royalty is computed to other royalty owners.

(3) The agreements herein authorized as to field-wide unitization shall not become effective until approved by the state oil and gas board by an order duly entered on the minutes of said board, and when so approved shall become fully valid and binding.

(4) The provisions of this section shall be cumulative of other existing laws not in conflict herewith.

SOURCES: Codes, 1942, § 6132-51; Laws, 1950, ch. 209, §§ 1-5.

Editor's Note — Section 29-7-1 provides that the words "mineral lease commission," wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources. Section 49-2-6, however, provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Leases of county and municipal lands and minerals for oil, gas, and mineral exploration and development, see § 17-9-1 et seq.

Counties conveying land for state park purposes leasing retained mineral interests, see § 19-7-21.

Leases of state-owned lands for oil, gas, and minerals, see § 29-7-3.

Leases of school district lands for oil, gas, and mineral exploration and development, see § 37-7-305.

Leases of agricultural high school lands for oil, gas, and minerals, see § 37-27-29.

JUDICIAL DECISIONS

1. In general.

Specific perfomance was properly granted a natural gas district, owned by two towns, of a lease between the district and a gas company, where the company had failed to furnish a budget of intended extensions and additions which was vital to full performance of the contract, to which information the district was entitled in connection with its obligations and right to purchase the extensions and additions upon termination of the lease, and where damages would not provide an adequate remedy, the termination of the lease requiring from its very nature extensive preparations and considerable time in advance, so that the adjudication of the district's rights in the lease could not wait the termination date without the risk of confusion and irreparable loss. Mississippi Valley Gas Co. v. DeSoto Natural Gas Dist., 235 So. 2d 285 (Miss. 1970).

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 172 et seq., 245, 288.

9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:12 et seq. (gas, oil, and other mineral leases).

FACILITIES FOR EXPLORATION, PRODUCTION, OR TRANSPORTATION OF OIL OR GAS IN NAVIGABLE WATERS

SEC.
53-3-71. Construction, operation and maintenance of facilities for exploration, production, or transportation of oil or gas in navigable waters.
53-3-73. Fee for permit.
53-3-75. Restrictions and prohibitions.

§ 53-3-71. Construction, operation and maintenance of facilities for exploration, production, or transportation of oil or gas in navigable waters.

Any person, firm or corporation duly authorized to engage in the exploration or production of oil, gas or other minerals under the provisions of Chapter 7, Title 29, Mississippi Code of 1972, and any person, firm or corporation duly authorized to engage in the transportation of oil, gas and other minerals under the provisions of Sections 29-1-101 through 29-1-105, Mississippi Code of 1972, shall have the right to construct, operate and maintain facilities incident to such operations in any of the navigable waters of the state upon obtaining from the state oil and gas board a permit for the construction, operation and maintenance of such facilities.

SOURCES: Codes, 1942, § 6132-61; Laws, 1968, ch. 262, § 1, eff from and after September 1, 1968.

Cross References — For a definition of the term “navigable waters”, see § 1-3-31.

§ 53-3-73. Fee for permit.

Any person, firm or corporation applying for a permit to construct a facility under Sections 53-3-71 through 53-3-75 shall pay to the state oil and gas supervisor a fee of five hundred dollars ($500.00).

SOURCES: Codes, 1942, § 6132-62; Laws, 1968, ch. 262, § 2, eff from and after September 1, 1968.

§ 53-3-75. Restrictions and prohibitions.

The right to construct, operate and maintain any facility as described in Section 53-3-71 in, on, under or across land which is submerged or wherever the tide may ebb and flow shall be subject to the following:

(a) The paramount right of the United States to control commerce and navigation;

(b) The right of the public to make free use of the waters; and

(c) The restrictions and prohibitions contained in Section 81 of the Mississippi Constitution of 1890, as same may be amended.

SOURCES: Codes, 1942, § 6132-63; Laws, 1968, ch. 262, § 3, eff from and after September 1, 1968.

UNITIZATION OF OIL AND GAS FIELDS AND POOLS

SEC.
53-3-101. Applications; hearings.
53-3-103. Oil and Gas Board may order unit operation.
53-3-105. Provisions and requirements of board's order.
53-3-107. When order becomes effective.
53-3-109. Amendment of orders; extension of units and inclusion of additional pools.
53-3-111. How production allocated.
53-3-113. Authority of unit operator; production by others prohibited.
53-3-115. Time and manner of giving notice.
53-3-117. Administration of Sections 53-3-101 through 53-3-119.
53-3-119. Court review of order of oil and gas board by appeal to the chancery court.

§ 53-3-101. Applications; hearings.

The State Oil and Gas Board upon the application of any interested person shall, after notice as herein provided, hold a hearing to consider the need for the operation as a unit of an entire field, or of an entire pool or pools, or of any portion or portions or combinations thereof, within a field, for the production of oil or gas or both, in order to increase the ultimate recovery thereof or to prevent waste. The board may reopen the hearing provided in this section at any time prior to the final order adjudicating that the requirements of section 53-3-107 have been satisfied.

SOURCES: Codes, 1942, § 6132-101; Laws, 1964, ch. 236, § 1; Laws, 1972, ch. 365, § 1, eff from and after passage (approved April 24, 1972).

Cross References — Administration of §§ 53-3-101 through 53-3-119.

Authority of unit operator; production by others prohibited, see § 53-3-113.

Time and manner of giving notice, see § 53-3-115.

Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 172 et seq.

§ 53-3-103. Oil and Gas Board may order unit operation.

The State Oil and Gas Board may issue an order requiring such unit operation, if it finds that:

(a) Unit operation of the field or of any pool or pools, or of any portion or portions or combinations thereof within the field, is reasonably necessary in order to effectively carry on secondary recovery, pressure maintenance, repressuring operations, cycling operations, water flooding operations, or any combination thereof, or any other form of joint effort calculated to substantially increase the ultimate recovery of oil or gas or both, from the unit so formed, or to prevent waste as defined in Section 53-1-3; and

(b) One or more method of unitized operation as applied to such common source of supply or portion thereof is feasible and will prevent waste or will with reasonable probability result in the recovery of substantially more oil or gas, or both, from the unit so formed than would otherwise be recovered; and

(c) The plan of unitization and the agreements effectuating same are fair and reasonable under all of the circumstances and protect the rights of all interested parties; and

(d) The correlative rights of interested parties will be protected; and

(e) The estimated additional cost incident to conducting such operation will not exceed the value of the estimated additional recovery of oil and gas and such cost of unit operation shall not be borne by the royalty owners.

The operators of such unit shall have drilled a sufficient number of wells to a sufficient depth and at such locations as may be necessary for the board to approve the boundaries of the unit and determine that the field, pool or pools have been reasonably developed according to a spacing pattern approved by the board. No field unitization shall be approved by the board until each drilling unit of the field has been drilled; however, the board is hereby authorized to waive the requirement that each and every drilling unit be drilled upon a finding of fact that it is not economically feasible for a specific drilling unit to be drilled.

SOURCES: Codes, 1942, § 6132-102; Laws, 1964, ch. 236, § 2; Laws, 1972, ch. 365, § 2, eff from and after passage (approved April 24, 1972).

Cross References — Powers of State Oil and Gas Board generally, see § 53-1-17.

When an order requiring unit operations pursuant to this section becomes effective, see § 53-3-107.

Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

JUDICIAL DECISIONS

1. In general.
2. Authority of board.

1. In general.

With respect to the requirement that each drilling unit of a field must be drilled before field unitization can be approved, drilling of a commercially productive well is not necessary; rather, drilling of a dry hole may satisfy the requirement. Petro Grande, Inc. v. Texas Pac. Oil Co., 338 So. 2d 808 (Miss. 1976).

2. Authority of board.

Even if surface landowners' appeal of a decision by the Mississippi Oil and Gas Board to grant a plan of unitization to a mineral lessee was not procedurally barred, the Board had the authority under Miss. Code Ann. § 53-3-103(a) and (c) to approve the unitization plan, the landowners were working interest owners in the unit from other tracts, the mineral lessee followed each statutory step required to have the plan approved, and the landowners failed to object to the plan. Douglas v. Denbury Onshore, LLC, 78 So. 3d 912 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 80 So. 3d 111, 2012 Miss. LEXIS 64 (Miss. 2012).

§ 53-3-105. Provisions and requirements of board's order.

The order issued by the State Oil and Gas Board shall be fair and reasonable under all of the circumstances and shall protect the rights of interested parties and shall include:

(a) A description of the geographical area and a description of the pool or pools, or of any portion or portions or combinations thereof affected which together constitute and are herein termed the "unit area."

(b) A statement of the nature of the operations contemplated.

(c) A formula for the allocation among the separately owned tracts in the unit area of all the oil or gas, or both, produced and saved from the unit area, and not required in the conduct of such operation, which formula must expressly be found reasonably to permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production or other benefits thereof. A separately owned tract's fair, equitable and reasonable share of the unit production shall be that proportionate part of unit production that the contributing value of such tract for oil and gas purposes in the unit area and its contributing value to the unit bears to the total of all like values of all tracts in the unit, taking into account all pertinent engineering, geological and operating factors that are reasonably susceptible of determination.

(d) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners), but if said owners of the unit area are unable to agree upon the amount of such charges, or to agree upon the correctness thereof, the board shall determine them after due notice and hearing thereon, upon the application of any interested party. The amount charged against the owner of a separately owned tract shall be considered expense of unit operation chargeable against such tract. The adjustments provided for herein may be treated separately and handled by agreements separate from the unitization agreement. The expense of dry holes drilled within the unit area prior to the effective date of an order of the board, as determined by Section 53-3-107, shall not be chargeable as investment under subsection (c) of Section 53-3-109, unless such dry hole is used in the unit operation, in which event its value to the unit shall be charged as investment.

(e) A provision that the costs and expenses of unit operation, including investment past and prospective, shall be borne by the owner or owners (not entitled to share in production free of operating costs and who in the absence of unit operation would be responsible for the expenses of developing and operating) of each tract in the same proportion that such tracts share in unit production. Each owner's interest in the unit area shall be responsible for his proportionate share thereof, and the unit operator shall have a lien thereon to secure payment of such share. When any owner fails to pay his part thereof when due and interest thereon at the legal rate, then all of such owner's interest in the unit production and equipment may be foreclosed in the same manner and under the same procedures provided for the foreclosure of mortgages in chancery court.

A transfer or conversion of any owner's interest or any portion thereof, however accomplished after the effective date of the order creating the unit, shall not relieve the transferred interest of said operator's lien on said interest for the cost and expense of unit operations, past or prospective.

(f) The designation of, or a provision for the selection of a successor to the unit operator. The conduct of all unit operations by the unit operator, and the selection of a successor to the unit operator, shall be governed by the terms and provisions of the unitization agreements.

(g) The time the unit operation shall become effective and the manner in which, and the circumstances under which, the unit operation shall terminate.

(h) A requirement that all oil and/or gas contained in a unit area shall be produced and sold as rapidly as possible without decreasing the ultimate recovery of such oil and/or gas or causing damage to the reservoir.

SOURCES: Codes, 1942, § 6132-103; Laws, 1964, ch. 236, § 3; Laws, 1972, ch. 365, § 3, eff from and after passage (approved April 24, 1972).

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et. seq., see § 75-58-5.

Amendment of orders; extension of units and inclusion of additional pools, see § 53-3-109.

JUDICIAL DECISIONS

1. In general.

Act required that surface acreage content be used as basis for allocating production between appellant, individual drilling unit, and a unitized drilling unit; allocation on the basis of contributing value to the unit could be applied only to allocate production among the members of the unitized drilling unit. Texas Pac. Oil Co. v. Petro Grande, Inc., 328 So. 2d 660 (Miss. 1976).

§ 53-3-107. When order becomes effective.

An order requiring unit operations pursuant to Section 53-3-103, Mississippi Code of 1972, shall not be effective unless and until the plan of unitization and the agreements incorporating the provisions of Section 53-3-105 have been signed or, in writing, ratified, adopted or approved by the owners or lessees of at least seventy-five percent (75%) interest on the basis of and in proportion to the surface acreage content of the unit area under the terms of the order and the agreement incorporating the provisions of Section 53-3-105 has been signed or, in writing, ratified, adopted or approved by at least seventy-five percent (75%) (exclusive of royalty interests owned by lessees or by subsidiaries or successors in title of any lessee) in interest of the royalty owners on the basis of and in proportion to the surface acreage content of the unit area and the board has made a finding to that effect, either in the order or in a supplemental order. In the event the required percentages have not signed, ratified or approved the respective agreements within twelve (12) months from and after the date of such order, it shall be automatically revoked.

SOURCES: Codes, 1942, § 6132-104; Laws, 1964, ch. 236, § 4; Laws, 1987, ch. 379, eff from and after passage (approved March 20, 1987).

Cross References — Applications relating to the unitization of oil and gas fields and pools, see § 53-3-101.

Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

§ 53-3-109. Amendment of orders; extension of units and inclusion of additional pools.

(a) The State Oil and Gas Board, after notice and hearing, by entry of new or amending orders, may from time to time enlarge the unit area by approving agreements adding to the unit operation a pool or pools or any portion or portions or combinations thereof not theretofore included, and extensions of existing pools. Any such agreement, in providing for allocation of production from the unit area, shall first allocate to each pool or portion thereof so added a portion of the total production of oil or gas, or both, from all pools affected within the unit area, as enlarged, such allocation to be based on the relative contribution which such added pool or portion or extensions thereof are expected to make, during the remaining course of unit operations, to the total production of oil or gas, or both, to the unit as enlarged. The production so allocated to each added pool or portion thereof shall be allocated to the separately owned tracts in the added unit area on the basis of the relative contribution of each such tract, as provided in paragraph (c) of Section 53-3-105. The remaining portion of unit production shall be allocated among the separately owned tracts within the previously established unit area in the manner provided by the unitization agreement. Orders promulgated under this paragraph shall become operative at 7:00 a.m. on the first day of the month next following the day on which the order becomes effective under the provisions of paragraph (b) of this section.

(b) An order promulgated by the board under paragraph (a) of this section shall not become effective unless and until (1) all of the terms and provisions of the plan of unitization and the unitization agreement relating to the extension or enlargement of the unit area or to the addition of a pool or portions thereof or extensions of existing pools to unit operations have been fulfilled and satisfied and evidence thereof has been submitted to the board, and (2) the extension or addition effected by such order has been agreed to in writing by the owners or lessees of at least seventy-five percent (75%) in interest on the basis of and in proportion to the surface acreage content of the area or pools or portions thereof or extensions of existing pools to be added to the unit operation by such order and also by at least seventy-five percent (75%) (exclusive of royalty interests owned by lessees or by subsidiaries or successors in title of any lessee) in interest of the royalty owners on the basis of and in proportion to the surface acreage content in the area or pools or portions thereof or extensions of existing pools to be added to the unit operation by such order, and evidence thereof has been submitted to the board, and (3) the owners of the existing unit have agreed in the manner provided in Section 53-3-107 or in accordance with the terms of the unitization agreement, to the extension or addition. In the event all of the above requirements are not fulfilled within twelve months from and after the date of such order, it shall be automatically revoked.

(c) After the operative date of an order promulgated under this section, costs and expenses of operation of the unit, as enlarged, shall be governed by paragraph (e) of Section 53-3-105. Adjustment among the owners of the unit area, as enlarged, (not including royalty owners) of their respective investments in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the operation of the unit area, as enlarged, shall be governed by paragraph (d) of Section 53-3-105.

SOURCES: Codes, 1942, § 6132-105; Laws, 1964, ch. 236, § 5; Laws, 1988, ch. 315, eff from and after July 1, 1988.

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

§ 53-3-111. How production allocated.

The portion of unit production allocated to a separately owned tract within the unit area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to any tract within the unit area shall be deemed for all purposes to be the conduct of operations for the production of oil or gas, or both, from each separately owned tract in the unit area. However, when an oil, gas and mineral lease contains land partially within and partially without said unit area, the unit agreement and production from the unit shall have no force and effect on lands lying outside of such unit area and failure of the lessee or lessees thereof to drill and develop such lands lying outside said unit area within one (1) year or during the term of the lease, whichever is a longer period of time, from the date of determination of the unit area by the state oil and gas board shall render such lease or leases on lands lying outside said unit area void and of no force and effect, unless otherwise held by production other than from unit production.

SOURCES: Codes, 1942, § 6132-106; Laws, 1964, ch. 236, § 6; Laws, 1972, ch. 365, § 4, eff from and after passage (approved April 24, 1972).

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

JUDICIAL DECISIONS

1. In general.

State Compulsory Field Wide Unitization Act, embodied in § 53-3-111, did not divide oil and gas leases on tract of land owned by drilling operators who obtained voluntary field wide drilling and production unit status under § 53-3-7. Palmer Exploration, Inc. v. Dennis, 730 F. Supp. 734 (S.D. Miss. 1989), aff'd, 896 F.2d 552 (5th Cir. 1990).

§ 53-3-113. Authority of unit operator; production by others prohibited.

From and after the effective date of an order of the board entered under the provisions of Sections 53-3-101 through 53-3-119, the operation of any well producing from the unit area defined in the order by persons other than the unit operator or persons acting under the unit operator's authority, or except in the manner and to the extent provided in such plan of unitization, shall be unlawful and is hereby prohibited.

SOURCES: Codes, 1942, § 6132-107; Laws, 1964, ch. 236, § 7, eff from and after passage (approved June 5, 1964).

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

§ 53-3-115. Time and manner of giving notice.

The notice provided for in Sections 53-3-101 through 53-3-119 shall be given in the time and manner as required by law and the rules and regulations of the oil and gas board for hearings by said board and shall be completed at least thirty days before the date set for the hearing.

The secretary of the board shall, in addition thereto, mail a notice not less than thirty days prior to the date set for the hearing to all persons owning the interests in the land within the unit area which said secretary by due diligence can ascertain. The failure of said secretary, however, to mail said notice to any such owner shall not affect the validity of any hearing held pursuant to the notice published in accordance with the preceding paragraph, or any rule, regulation, or order issued pursuant to such hearing.

SOURCES: Codes, 1942, § 6132-108; Laws, 1964, ch. 236, § 8, eff from and after passage (approved June 5, 1964).

Cross References — Public hearings of State Oil and Gas Board, see § 53-1-21.

Appeals generally to chancery court from final rules, regulations or orders of state oil and gas board, see § 53-1-39.

Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

§ 53-3-117. Administration of Sections 53-3-101 through 53-3-119.

In administering Sections 53-3-101 through 53-3-119, the oil and gas board shall be governed and controlled by the declaration of policy set out in Section 53-1-1 et seq., and except as otherwise herein expressly provided, all proceedings held under Sections 53-3-101 through 53-3-119, including the filing of petitions, the giving of notices, the conduct of hearings and the entry of orders and appeals therefrom, shall be governed and controlled by the procedure provided for by Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, and the rules and regulations promulgated by the oil and gas board pursuant to said sections. The definition of the terms used in Sections 53-3-101 through 53-3-119 shall be controlled by definitions contained in Section 53-1-3, and the rules and regulations promulgated by the oil and gas board pursuant to Sections 53-1-1 through 53-1-47, inclusive, and Sections 53-3-1 through 53-3-21, inclusive, unless a definition appearing in Section 53-1-3 is entirely inconsistent with the meaning and purpose of the term as used in Sections 53-3-101 through 53-3-119, in which event such term shall be given that meaning that is harmonious with and tends to effectuate the purposes of Sections 53-3-101 through 53-3-119.

SOURCES: Codes, 1942, § 6132-109; Laws, 1964, ch. 236, § 9, eff from and after passage (approved June 5, 1964).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of subsection (2) by substituting "Section 53-1-1 et seq." for "Sections 53-1-1 et seq." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

§ 53-3-119. Court review of order of oil and gas board by appeal to the chancery court.

Any interested person adversely affected by any provision of Sections 53-3-101 through 53-3-119 or by any rule, regulation or order made by the state oil and gas board thereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by appeal, which appeal shall be to the chancery court of the county wherein the land involved, or any part thereof, is situated. The term "interested person" as used herein shall be interpreted broadly and liberally and shall include all mineral and royalty owners. Any interested party may appeal to the chancery court of the county wherein the land involved or any part thereof is situated, if appeal be demanded within thirty (30) days from the date that such rule, regulation or order of the board is filed for record in the office of the board.

Such appeal may be taken by filing notice of the appeal with the state oil and gas board, whereupon the board shall, under its certificate, transmit to the court appealed to all documents and papers on file in the matter, together with a transcript of the record, which documents and papers together with said transcript of the record shall be transmitted to the clerk of the chancery court of the county to which the appeal is taken.

Except as hereinabove provided, such appeal shall be made in accordance with the provisions of Sections 53-1-39 and 53-1-41.

SOURCES: Codes, 1942, § 6132-110; Laws, 1964, ch. 236, § 10; Laws, 1972, ch. 365, § 5; Laws, 1984, ch. 380, § 2, eff from and after passage (approved April 18, 1984).

Cross References — Applicability of Mississippi Natural Gas Marketing Act to wells in a field or pool unitized pursuant to § 53-3-101 et seq., see § 75-58-5.

RESEARCH REFERENCES

Law Reviews. 1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

JUDICIAL DECISIONS

1. Untimely appeal.

Surface landowners were procedurally barred under Miss. Code Ann. § 53-3-119 from challenging a decision by the Mississippi Oil and Gas Board to grant ownership and use of an abandoned wellbore to the mineral lessee because the Board issued its approval on September 17, 2003, and the landowners appeal occurred on March 12, 2009, well beyond the 30-day statutory limit to appeal the Board's decision. Douglas v. Denbury Onshore, LLC, 78 So. 3d 912 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 80 So. 3d 111, 2012 Miss. LEXIS 64 (Miss. 2012).

UNDERGROUND STORAGE OF NATURAL GAS OR COMPRESSED AIR

SEC.
53-3-151. Definitions.
53-3-153. Legislative declaration.
53-3-155. Underground storage authorized pursuant to board's order.
53-3-157. Protection against pollution or against escape of natural gas or compressed air; property rights.
53-3-159. Right of eminent domain.
53-3-161. Right of landowner to drill and make other use of land.
53-3-163. Action for provable damages.
53-3-165. Storage in offshore waters prohibited.

§ 53-3-151. Definitions.

As used in Sections 53-3-151 through 53-3-165: (a) "underground storage" shall mean storage in an underground reservoir, stratum or formation of the earth; (b) "natural gas" shall mean gas of sufficient purity to be capable of use for residential purposes; (c) "native gas" shall mean gas which previously has not been withdrawn from the earth, or which, having been withdrawn, is injected into a reservoir for purposes other than underground storage; (d) "compressed air" shall mean any nonhydrocarbon gas; and (e) "State Oil and Gas Board" or "board" shall mean the State Oil and Gas Board of Mississippi.

SOURCES: Codes, 1942, § 6132-131; Laws, 1971, ch. 436, § 1, eff from and after passage (approved March 24, 1971); Laws, 1992, ch. 344 § 3, eff from and after passage (approved April 20, 1992).

Editor's Note — Section 8 of Laws of 1971, ch. 436, provides as follows:

"SECTION 8. A county having two (2) judicial districts and being intersected by U.S. Highway 84 and Interstate 59 is hereby excluded from the provisions of this act."

Cross References — This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

ALR. Implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 14.

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 152, 158, 163-165.

§ 53-3-153. Legislative declaration.

The underground storage of natural gas or compressed air which promotes the conservation thereof, which permits the building of large quantities of natural gas or compressed air in reserve for orderly withdrawal in periods of peak demand, making natural gas or compressed air more readily available to the consumer, or which provides more uniform withdrawal from various gas or oil fields, is in the public interest and welfare of this state and is for a public purpose.

SOURCES: Codes, 1942, § 6132-132; Laws, 1971, ch. 436, § 2; Laws, 1992, ch. 344 § 4, eff from and after passage (approved April 20, 1992).

Cross References — This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 152, 158, 163-165.

§ 53-3-155. Underground storage authorized pursuant to board's order.

The use of an underground reservoir, stratum or formation as a reservoir for the storage of natural gas or compressed air as an appliance or appurtenance in connection with the conveying, transmission or distribution of natural gas or compressed air is hereby authorized, provided that the State Oil and Gas Board shall first enter an order, after notice and hearing pursuant to the provisions of Sections 53-1-19 through 53-1-31, inclusive, approving any such proposed underground storage of natural gas or compressed air upon finding as follows:

(a) That the underground stratum or formation sought to be used as a reservoir for the injection, storage and withdrawal of natural gas or compressed air is suitable and feasible for such use and in the public interest, and is not an oil reservoir capable of commercial production;

(b) That a majority interest of all rights of the surface interest and a majority interest of all interests in the underground stratum or formation have consented to such use in writing;

(c) That the use of the underground stratum as a reservoir for the storage of natural gas or compressed air will not contaminate other formations containing fresh water, oil, gas or other commercial mineral deposits; and

(d) That the proposed storage will not endanger lives or property.

SOURCES: Codes, 1942, § 6132-133; Laws, 1971, ch. 436, § 3; Laws, 1992, ch. 344 § 5, eff from and after passage (approved April 20, 1992).

Cross References — Right of eminent domain relating to underground storage of natural gas, see § 53-3-159.

This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

Provisions governing underground storage of gases in reservoirs dissolved in salt beds, see § 75-57-13.

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Duty and liability as to plugging oil or gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 14.

Am Jur. 38 Am. Jur. 2d, Gas and Oil § 158.

§ 53-3-157. Protection against pollution or against escape of natural gas or compressed air; property rights.

The State Oil and Gas Board shall issue such orders, rules and regulations as may be necessary for the purpose of protecting any such underground storage reservoir, stratum or formation against pollution or against the escape of natural gas or compressed air therefrom, including such necessary rules and regulations as may pertain to the drilling into or through such underground storage reservoir, stratum or formation.

All natural gas or compressed air which has previously been reduced to possession and which is subsequently injected into an underground storage reservoir, stratum or formation shall at all times be deemed the property of the injector, his successors and assigns, and in no event shall such natural gas or compressed air be subject to the right of the owner of the surface of the lands or of any mineral interest therein under which such underground storage reservoir, stratum or formation shall lie or be adjacent to or of any person other than the injector, his successors and assigns, to produce, take, reduce to possession, waste or otherwise interfere with or exercise any control thereover; provided, that the State Oil and Gas Board shall have entered an order, either before or after the enactment hereof, approving such underground storage reservoir, stratum or formation.

SOURCES: Codes, 1942, § 6132-134; Laws, 1971, ch. 436, § 4; Laws, 1992, ch. 344 § 6, eff from and after passage (approved April 20, 1992).

Cross References — This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Duty and liability as to plugging oil or gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 14.

Am Jur. 38 Am. Jur. 2d, Gas and Oil §§ 144-150, 158, 163-165.

3 Am. Jur. Proof of Facts 3d 517, Leaking Underground Gasoline Storage Tanks.

§ 53-3-159. Right of eminent domain.

Any company, person or association of persons, municipality, association of municipalities, public utility district, or natural gas district, incorporated or organized for the purpose of building or constructing pipelines and appliances for the conveying and distribution of oil or gas and authorized by law in Section 11-27-47, Mississippi Code of 1972, to exercise eminent domain rights with respect thereto, is hereby empowered, after obtaining approval of the State Oil and Gas Board as herein required, to exercise the right of eminent domain, in the manner provided by law, to acquire all surface and subsurface rights necessary and useful for the purpose of storing natural gas or compressed air in any underground reservoir, stratum or formation, pursuant to the provisions hereof. Such power shall be exercised under the procedure provided by Chapter 27, Title 11, Mississippi Code of 1972, provided that:

(a) No gas-bearing sand, stratum or formation shall be subject to appropriation by eminent domain unless the condemnor shall show, to the satisfaction of the board, that such sand, stratum or formation has a greater value or utility as a natural gas or compressed air storage reservoir for the purpose of ensuring an adequate supply of natural gas or compressed air for consumers, or for the conservation of natural gas or compressed air, than for the production of the native gas which remains therein;

(b) Adequate and fair compensation for any native gas which is appropriated by eminent domain and which is otherwise capable of being commercially produced shall be included in that hereinabove provided for; and

(c) No rights or interests in underground reservoirs, strata or formations acquired for the injection, storage and withdrawal of natural gas or compressed air by a party who has eminent domain rights under Section 11-27-47, Mississippi Code of 1972, and who has obtained an order from the Oil and Gas Board under the provisions of Section 53-3-155, shall be subject to appropriation hereunder.

SOURCES: Codes, 1942, § 6132-135; Laws, 1971, ch. 436, § 5; Laws, 1992, ch. 344 § 7, eff from and after passage (approved April 20, 1992).

Cross References — Right of condemnation granted by this section not to prejudice certain other rights of owner of land or of interest therein, see § 53-3-161.

This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

ALR. Gasoline or other fuel storage tanks as nuisance. 50 A.L.R.3d 209.

Duty and liability as to plugging oil or a gas well abandoned or taken out of production. 50 A.L.R.3d 240.

Implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 147.

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 55-57.

CJS. 29A C.J.S., Eminent Domain § 52.

§ 53-3-161. Right of landowner to drill and make other use of land.

The right of condemnation granted by Section 53-3-159, shall be without prejudice to the right of the owner of said land or of other rights or interests therein to drill or bore through the underground reservoir, stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the State Oil and Gas Board issued for the purpose of protecting underground storage reservoirs, strata or formations against pollution and against the escape of natural gas or compressed air therefrom, and shall be without prejudice to the rights of the owners of said lands or other rights or interests therein as to all other uses thereof.

SOURCES: Codes, 1942, § 6132-137; Laws, 1971, ch. 436, § 7, eff from and after passage (approved March 24, 1971); Laws, 1992, ch. 344 § 8, eff from and after passage (approved April 20, 1992).

Cross References — This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

ALR. Rights and obligations, with respect to adjoining landowners, arising out of secondary recovery of gas, oil, and other fluid minerals. 19 A.L.R.4th 1182.

Am Jur. 26 Am. Jur. 2d, Eminent Domain §§ 55-57.

CJS. 29A C.J.S., Eminent Domain § 52.

§ 53-3-163. Action for provable damages.

If any property owner whose interest has been acquired under the provisions of Sections 53-3-151 through 53-3-165, either through negotiation or through eminent domain proceedings, shall file a legal action for provable damages as a result of alleged negligent use of the property acquired by the condemnor, the proof of said damages shall constitute a prima facie case of negligence on the part of the condemnor.

SOURCES: Codes, 1942, § 6132-138; Laws, 1971, ch. 436, § 10, eff from and after passage (approved March 24, 1971).

Cross References — This section as not authorizing establishment of underground storage of natural gas or compressed air in offshore waters of State, see § 53-3-165.

RESEARCH REFERENCES

ALR. Implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage. 18 A.L.R.4th 147.

Am Jur. 3 Am. Jur. Proof of Facts 3d 517, Leaking Underground Gasoline Storage Tanks.

§ 53-3-165. Storage in offshore waters prohibited.

No provisions of Sections 53-3-151 through 53-3-165 shall operate so as to authorize the establishment of underground storage of natural gas or compressed air in the offshore waters of the State of Mississippi.

SOURCES: Codes, 1942, § 6132-136; Laws, 1971, ch. 436, § 6; Laws, 1992, ch. 344 § 9, eff from and after passage (approved April 20, 1992).

TRANSPORTATION OF CRUDE OIL

Sec.
53-3-201. Required documentation for transportation of crude oil.
53-3-203. Enforcement; penalty.

§ 53-3-201. Required documentation for transportation of crude oil.

The State Oil and Gas Board shall adopt regulations to require any corporation, association, partnership or person in possession of crude petroleum oil or any substance containing any quantity of crude oil or any sediment, water or brine produced in association with the exploration and/or production of oil or gas, or both, being transported or for transportation from or to any storage, disposal, processing, or refining facility to possess specific documentation which substantiates the right to be in possession of such substance. The regulations shall require such documentation to include:

(a) The identity of the operator and the location of the lease from which originated the crude petroleum oil or any substance including any sediment, water or brine produced in association with the exploration or production of oil or gas, or both, if it is purportedly being or to be transported from a lease;

(b) The identity of the operator and the location of the storage facility from which or to which the crude petroleum oil or any substance, including any sediment, water or brine produced in association with the exploration or production of oil or gas, or both, is being or is to be transported;

(c) The identity of the operator and the location of the disposal, processing or refining facility to which the crude petroleum oil or any substance, including any sediment, water or brine produced in association with the exploration and production of oil or gas, or both, is being or is to be transported;

(d) The estimated percentage of crude petroleum oil in the substance, sediment, water or brine produced in association with the exploration or production of oil or gas, or both, which is being or is to be transported;

(e) The volume of crude petroleum oil being or to be transported; and

(f) Any additional information the supervisor of the state oil and gas board finds necessary or appropriate.

SOURCES: Laws, 1983, ch. 511, § 2, eff from and after April 12, 1983.

Editor's Note — Laws of 1983, ch. 511, § 1, effective from and after April 12, 1983, provides as follows:

"SECTION 1. The Legislature finds that the exploration and production of oil and gas for the energy needs of the state and the nation is of vital concern and that a serious problem of theft of the production increases both the cost to the public and the danger to the public on the roads of the state. Therefore, it is the intent of the Legislature to impose certain requirements upon the transportation of oil and any substance containing any quantity of crude petroleum."

Cross References — State Oil and Gas Board generally, see § 53-1-1 et seq.

Supervisor of State Oil and Gas Board, see § 53-1-7.

§ 53-3-203. Enforcement; penalty.

Any law enforcement officer or the supervisor of the State Oil and Gas Board or his designated employees may at any time inspect and for probable cause impound oil or any substance as defined in Section 53-3-201 and the vehicle transporting it, pending being furnished with the documentation as required by Section 53-3-201 or other proof of ownership or right to possession, whenever (a) he has reasonable cause to examine the documentation, (b) the transporter lacks such documentation or the documentation is substantially at variance with the fact, or (c) the lawful severance and maintenance tax has not been paid on any part of such product. Furthermore, any transporter who does not possess the documentation as required by Section 53-3-201 or other proof of ownership or right to possession shall be fined an amount equal to the market value of the substance being transported but not less than two thousand dollars ($2,000.00), the market value of such substance to be determined by the State Oil and Gas Board. Any such fine paid or collected shall be paid to the state treasurer for credit to the special oil and gas board fund.

SOURCES: Laws, 1983, ch. 511, § 3, eff from and after April 12, 1983.

Cross References — Requirement that state officials pay over funds received to state treasury, see § 7-9-21.

CHAPTER 5

Geological and Mineral Survey

Sec.
53-5-1. Natural resources commission to assume duties and responsibilities of geological, economic and topographical survey board.
53-5-3 and 53-5-5. Repealed.
53-5-7. Objects of survey.
53-5-9. Repealed.
53-5-11. Reports to be published.
53-5-13. Survey employees may go on lands.
53-5-15. Board may cooperate with United States Geological Survey.
53-5-17. Geological and mineral resource surveys; expenditures by counties and municipalities.
53-5-19. Governmental subdivisions may cooperate and share costs of survey.
53-5-21. Payment of costs of survey.
53-5-23. Priorities for performance of work.

§ 53-5-1. Natural resources commission to assume duties and responsibilities of geological, economic and topographical survey board.

(1) The Mississippi Commission on Natural Resources shall be the geological, economic and topographical survey board and shall exercise the duties and responsibilities of the geological, economic and topographical survey board through the bureau of geology and energy resources of the Mississippi Department of Natural Resources, insofar as practicable under the provisions of Chapter 2 of Title 49, Mississippi Code of 1972.

(2) The words "Geological, Economic and Topographical Survey Board" wherever they may appear in the laws of the State of Mississippi, shall be construed to mean the Mississippi Commission on Natural Resources.

SOURCES: Codes, 1942, § 8954-01; Laws, 1958, ch. 477, § 1; Laws, 1978, ch. 484, § 33, eff from and after July 1, 1979.

Editor's Note — Section 49-2-6 provides that wherever the term "Mississippi Commission on Natural Resources" appears in any law the same shall mean the Mississippi Commission on Environmental Quality.

Cross References — Creation, composition, powers, and duties of state oil and gas board, see § 53-1-1 et seq.

Surface mining and reclamation of land, see § 53-7-1 et seq.

Mississippi Mineral Resources Institute, see § 57-55-9.

RESEARCH REFERENCES

Am Jur. 48 Am. Jur. Proof of Facts 2d 153, Damages for Unauthorized Geophysical Exploration.

§§ 53-5-3 and 53-5-5. Repealed.

Repealed by Laws, 1978, ch. 484, § 34, eff from and after July 1, 1979.
§ 53-5-3. [Codes, 1942, § 8954-03; Laws, 1958, ch. 477, § 3]
§ 53-5-5. [Codes, 1942, § 8954.06; Laws, 1958, ch. 477, § 6]

Editor's Note — Former § 53-5-3 provided for meetings of former Geological, Economic, and Topographical Survey Board.

Former § 53-5-5 provided for compensation of director and personnel of former Geological, Economic, and Topographical Survey Board.

§ 53-5-7. Objects of survey.

The object of the survey shall be:

(a) An examination of the mineral natural resources of the State, viz: the metalliferous deposits, petroleum, natural gas, as well as building stones, clays, coals, cements, waters, and all other mineral substances of value.

(b) The investigation, mapping, and compilation of reports upon the water supplies, water power of the State, gauging the streams, etc., with reference to their application to irrigation, protection from overflow and other purposes.

(c) Studies and reports on constructional materials and their values.

(d) The preparation and completion of special geologic, topographic, and economic maps to illustrate the resources of the State.

(e) The preparation of special reports with necessary illustrations and maps which shall embrace both a general and detailed description of the geological and natural resources of the state. Said reports are to be provided in sufficient number for distribution to the educational institutions of the State, the State Library and as demand may otherwise justify.

(f) The consideration of such other kindred scientific, educational, and economic questions as, in the judgment of the Board, shall be deemed of value to the people of the State.

SOURCES: Codes, 1942, § 8954-07; Laws, 1958, ch. 477, § 7, eff from and after passage (approved May 6, 1958).

§ 53-5-9. Repealed.

Repealed by Laws, 1978, ch. 484, § 34, eff from and after July 1, 1979.
[Codes, 1942, § 8954.08; Laws, 1958, ch. 477, § 8]

Editor's Note — Former § 53-5-9 required the former Geological, Economic, and Topographical Survey Board to report to legislature.

§ 53-5-11. Reports to be published.

The regular and special reports of the survey, with proper illustrations and maps shall be printed as the board may direct, and the reports shall be distributed or sold by the board as interest of the state and of science may demand, and all money obtained by the sale of the reports shall be paid into the state geological survey publications fund.

SOURCES: Codes, 1942, § 8954-02; Laws, 1958, ch. 477, § 2, eff from and after passage (approved May 6, 1958).

§ 53-5-13. Survey employees may go on lands.

For the purpose of making the survey hereinbefore provided for, it shall be lawful for the persons employed by the survey in making the same to enter upon all lands within the boundaries of this state, but this section shall not be construed as authorizing unnecessary interference with private rights.

SOURCES: Codes, 1942, § 8954-05; Laws, 1958, ch. 477, § 5, eff from and after passage (approved May 6, 1958).

§ 53-5-15. Board may cooperate with United States Geological Survey.

The board of the Mississippi Geological Survey, in the conduct of its work may confer with, and when deemed advisable, may act in cooperation with the United States Geological Survey or other federal agencies in making and publishing the results of topographic, geologic and hydrographic surveys in the State of Mississippi. Such cooperative effort may be directed by either of the contracting parties at the discretion of the board.

SOURCES: Codes, 1942, § 8954-04; Laws, 1958, ch. 477, § 4, eff from and after passage (approved May 6, 1958).

Editor's Note — Section 53-5-1 provides that Geological, Economic and Topographical Survey Board means the Mississippi Commission on Natural Resources, which, pursuant to Section 49-2-6, now means the Mississippi Commission on Environmental Quality.

§ 53-5-17. Geological and mineral resource surveys; expenditures by counties and municipalities.

The boards of supervisors of the various counties of this state, the board of aldermen of any municipality, or the governing authorities of any governmental subdivision of the state are hereby authorized in their discretion to expend out of their general funds an amount up to the estimated cost of a geological and mineral resource survey of any such governmental subdivision, such survey to be performed by the Mississippi Geological, Economic and Topographical Survey, the aforesaid survey to be performed for the purpose of exploring, mapping, testing and publishing reports of the mineral natural resources and geology of the aforesaid governmental subdivisions. The findings of such survey shall include a statement regarding the quantity and quality of any mineral or natural resource found, as well as advice and recommendations as to the possible utilization of any minerals or other substances found by reason of such survey and any recommendations for further study and research beyond the facilities of the Mississippi Geological, Economic and Topographical Survey.

SOURCES: Codes, 1942, § 8954-21; Laws, 1966, ch. 312, § 1, eff from and after passage (approved May 17, 1966).

§ 53-5-19. Governmental subdivisions may cooperate and share costs of survey.

Two or more governmental subdivisions may combine upon the agreement of the governing boards thereof and may contribute funds as agreed to among themselves to such survey as authorized by Section 53-5-17, so as to facilitate a cooperative survey of more than one governmental subdivision at the same time.

SOURCES: Codes, 1942, § 8954-22; Laws, 1966, ch. 312, § 2, eff from and after passage (approved May 17, 1966).

§ 53-5-21. Payment of costs of survey.

Payments to the agency or agencies making the surveys authorized in Section 53-5-17 may be paid during the performance of the survey. However, the total of such payments shall not exceed ninety per cent (90%) of the estimated total cost until after the survey or surveys are finally completed and formally accepted by the governing board or boards having the survey made. Payments may be extended over the term of office of the governing board or boards having such surveys made.

SOURCES: Codes, 1942, § 8954-23; Laws, 1966, ch. 312, § 3, eff from and after passage (approved May 17, 1966).

§ 53-5-23. Priorities for performance of work.

The Mississippi Geological, Economic and Topographical Survey may set up a system of priorities for the performance of any of the work authorized in this chapter.

SOURCES: Codes, 1942, § 8954-24; Laws, 1966, ch. 312, § 4, eff from and after passage (approved May 17, 1966).

CHAPTER 7

Surface Mining and Reclamation of Land

Sec.
53-7-1. Citation of chapter.
53-7-3. Legislative findings and declarations.
53-7-5. Definitions.
53-7-7. Permit requirement; applicability of law; exceptions and exemptions.
53-7-9. Administration and enforcement of chapter.
53-7-11. Rules and regulations; public hearing; notice; comments.
53-7-13, 53-7-15. Repealed.
53-7-17. Commission to retain exclusive jurisdiction on passage of federal strip mining legislation.
53-7-19. Powers and duties of commission.
53-7-21. Surface mining permits; issuance; certificate of compliance.
53-7-23. Issuance of general permits; conditions; application for permit; reclamation plan; review of application.
53-7-25. General permit application fees.
53-7-27. Submission of application for permit, proposed initial reclamation plan, and performance bond; form of application.
53-7-29. Filing of copies of permit applications for public inspection with certain state agencies; review of application by agencies; comments and recommendations.
53-7-31. Reclamation plans; contents; reclaiming lands in lieu of lands included in notice of intent.
53-7-33. Repealed.
53-7-35. Reclamation standards and methods; alternative methods; concurrent reclamation; continuing right of entry; action on bond.
53-7-37. Performance bonds.
53-7-39. Initial review of application by department; department to make recommendation to Permit Board; on-site inspection of proposed area as condition of granting permit.
53-7-41. Authority of Permit Board to issue, reissue, deny, modify, revoke, cancel, rescind, suspend, or transfer permit; grounds for denial; public hearing; board may authorize executive director to make permit decisions.
53-7-43. Applications for modification, transfer, or reissuance of permit; right of successive reissuance upon expiration; term of reissuance; continuance of operation during reissuance process.
53-7-45. Review of Permit Board action or decision.
53-7-47. Mining prohibited in national and state park lands.
53-7-49. Designation of certain lands as unsuitable for surface mining; criteria for designation.
53-7-51. Designation of certain lands as unsuitable for surface mining; petition for modification, amendment or termination of designation; appeal.
53-7-53. Records, reports and equipment to be maintained by permittees.
53-7-55. Inspection by department; inspection reports; procedure on detection of violation.
53-7-57. Inspection by representatives of local soil and water conservation districts; recommendations of progress of reclamation activities.
53-7-59. Violations; penalties; appeals; commission authorized to pursue civil action for relief; limitation on liability.
53-7-61. Criminal penalties for false statement, representation or certification; willful violations.

53-7-63. Request for formal hearing by aggrieved party; authority to subpoena witnesses, administer oaths, examine witnesses and conduct hearing.
53-7-65. Report or complaint alleging violation; investigation; hearing; order; notice; proof of service; appeal.
53-7-67. Release of bond; contents of application; inspection and evaluation of reclamation work; schedule for release; procedure on disapproval of release.
53-7-69. Surface Mining and Reclamation Fund.
53-7-71. Reclamation work; utilizing services of governmental agencies and private contractors; competitive bidding; right of access.
53-7-73. Repealed.
53-7-75. Disclosure of confidential information; penalty; application of Trade Secrets Act.
53-7-77. Surface Mine Worker Safety Training Program Operations Fund.

§ 53-7-1. Citation of chapter.

This chapter shall be known and may be cited as the "Mississippi Surface Mining and Reclamation Act."

SOURCES: Laws, 1977, ch. 476, § 1; Laws, 2002, ch. 492, § 1, eff from and after July 1, 2002.

Cross References — Geological and mineral survey, see § 53-5-1 et seq.
Regulation of surface coal mining and reclamation, see § 53-9-1 et seq.
Mississippi Mineral Resources Institute, see § 57-55-9.

ATTORNEY GENERAL OPINIONS

The Department of Environmental Quality may consider adverse affects on public highways or roads in acting upon a permit application for a surface mining operation and may base a denial of such a permit upon its findings. Richardson, December 16, 1998, A.G. Op. #98-0773.

The regulations on surface mining as set forth in the Mississippi Surface Mining and Reclamation Law, Sections 53-7-1 et seq., do not affect the authority of a municipality or county to regulate land use by restricting such activities to zones or districts deemed appropriate by the governing authorities. Snyder, Oct. 6, 2000, A.G. Op. #2000-0577.

A county board of supervisors, exercising authority under County Home Rule, cannot adopt an ordinance with county-wide applicability regulating and restricting the removal or mining of dirt within a specific distance of public roads and road rights-of-way; however, a county may petition the Board of Mississippi Geological, Economic and Topographical Survey for relief and, in addition, may recover civilly for damages to roads caused by undermining and/or excavation of adjacent lands. Griffith, May 31, 2002, A.G. Op. #02-0300.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 152.

9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:1 et seq.

CJS. 58 C.J.S., Mines and Minerals § 270.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

§ 53-7-3. Legislative findings and declarations.

(1) The Legislature of the State of Mississippi finds and declares that:

(a) Mississippi is endowed with abundant varied natural resources which serve as a source of recreation and economic benefit to our people;

(b) The extraction of materials by surface mining is a significant economic activity and is an integral part of the growth and development of this state;

(c) The process of surface mining necessarily involves the alteration of the face of the land;

(d) The process of surface mining must be accomplished in a manner to reduce the undesirable effects of surface mining to a bare minimum, and to protect and preserve our land which is one of our greatest natural resources; and

(e) The land whose face has been altered by surface mining requires reclamation to prevent permanent damage to surface water and the land so that it may be used by future generations, to protect the safety and welfare of Mississippians, and to preserve available natural resources.

(2) The Legislature, recognizing its duty and obligation to foster the economic well-being of the state and nation, to encourage the development of its natural resources and to preserve the beauty of its lands, declares that the purpose of this chapter is to:

(a) Provide for the regulation and control of surface mining so as to minimize its injurious effects by requiring proper reclamation of surface-mined lands;

(b) Establish a regulatory system of permits and reclamation standards, supplemented by the knowledge, expertise and concerns of mining operators, landowners and the general public which is designed to achieve an acceptable, workable balance between the economic necessities of developing our natural resources and the public interest in protecting our birthright of natural beauty and a pristine environment; and

(c) Establish a regulatory system of uniform standards and procedures to govern the mining and reclamation of land, accepting the proposition that varied types of mining, varied types of materials being mined and varied geographical and ecological areas of this state may require variations in methods of surface mining and reclamation, but any variation shall be designed to restore the affected area to a useful, productive and beneficial purpose.

SOURCES: Laws, 1977, ch. 476, § 2; Laws, 2002, ch. 492, § 2, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Adjoining Landowners, Form 4.1 (complaint, petition, or declaration-allegation-relative situation of parties); Form 4.2 (complaint, petition, or declaration-allegation — Interest of plaintiff); Form 4.3 (complaint, petition, or declaration — allegation-duty of defendant); Form 4.4

(complaint, petition, or declaration-allegation-breach of duty by defendant); Form 20.1 (complaint, petition, or declaration-allegation-negligence in excavation).

12B Am. Jur. Legal Forms 2d, Mines and Minerals §§ 175:282 et seq. (protection and use of surface); §§ 175:471 et seq. (development and operating agreements).

§ 53-7-5. Definitions.

For the purposes of this chapter, the following terms shall have the meanings ascribed in this section, except where the context otherwise requires:

(a) "Affected area" means any area from which any materials are removed or are to be removed in a surface mining operation and upon which any materials are to be deposited. The affected area includes all areas affected by the construction of new roads, or the improvement or use of existing roads other than public roads to gain access and to haul materials.

(b) "Appeal" means an appeal to an appropriate court of the state taken from a final decision of the Permit Board or commission made after a formal hearing before that body.

(c) "As recorded in the minutes of the Permit Board" means the date of the Permit Board meeting at which the action concerned is taken by the Permit Board.

(d) "Commission" means the Mississippi Commission on Environmental Quality.

(e) "Department" means the Mississippi Department of Environmental Quality, acting through the Office of Geology and Energy Resources or a successor office.

(f) "Executive director" means the Executive Director of the Mississippi Department of Environmental Quality.

(g) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of determining the location, quantity or quality of a deposit of any material, except the drilling of test holes or core holes of twelve (12) inches or less in diameter.

(h) "Formal hearing" means a hearing on the record, as recorded and transcribed by a court reporter, before the commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the commission or Permit Board.

(i) "Fund" means the Surface Mining and Reclamation Fund created by Section 53-7-69.

(j) "General permit" means general permit as defined in Section 49-17-5.

(k) "Highwall" means a wall created by mining having a slope steeper than two (2) to one (1).

(*l*) "Interested party" means interested party as provided under Section 49-17-29.

(m) "Material" means bentonite, metallic ore, mineral clay, dolomite, phosphate, sand, gravel, soil, clay, sand clay, clay gravel, stone, chalk, and any other materials designated by the commission.

(n) "Nearest approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it substantially resembles the surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and water-collecting depressions eliminated, to the extent practicable, unless contained in an approved reclamation plan.

(o) "Operator" means the person that is to engage or that is engaged in a surface mining operation, whether on a permanent, continuous basis, or for a limited period of time and for a specific or ancillary purpose, including any person whose permit or coverage under a general permit has expired or been suspended or revoked.

(p) "Overburden" means all materials which are removed to gain access to other materials in the process of surface mining, including the material before or after its removal by surface mining.

(q) "Permit" means a permit to conduct surface mining and reclamation operations under this chapter.

(r) "Permit area" means all the area designated in the permit application or application for coverage under a general permit and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area which the operator proposes to surface mine thereafter.

(s) "Permit Board" means the Permit Board created by Section 49-17-28.

(t) "Person" means any individual, trust, firm, joint-stock company, public or private corporation, joint venture, partnership, association, cooperative, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee of the United States.

(u) "Public hearing" means a public forum organized by the commission, department or Permit Board for the purpose of providing information to the public regarding a surface mining and reclamation operation and at which members of the public are allowed to make comments or ask questions or both of the commission, department or the Permit Board regarding a proposed operation or permit.

(v) "Reclamation" means work necessary to restore an area of land affected by surface mining to a useful, productive and beneficial purpose, the entire process being designed to restore the land to a useful, productive and beneficial purpose, suitable and amenable to surrounding land and consistent with local environmental conditions in accordance with the standards set forth in this chapter.

(w) "State" means the State of Mississippi.

(x) "Spoil pile" means the overburden and other mined waste material as it is piled or deposited in the process of surface mining.

(y) "Surface mining" or "mining" means the extraction of materials from the ground or water or from waste or stock piles or from pits or banks or natural occurrences by methods including, but not limited to, strip drift, open pit, contour or auger mining, dredging, placering, quarrying and leaching, and activities related thereto, which will alter the surface.

(z) "Surface mining operation" or "operation" means the activities conducted at a mining site, including extraction, storage, processing and shipping of materials and reclamation of the affected area. This term does not include the following: the dredging and removal of oyster shells from navigable bodies of water; the dredging and removal of any materials from the bed of navigable streams, when the activity is regulated and permitted under an individual permit by the United States Corps of Engineers; the extraction of hydrocarbons in a liquid or gaseous state by means of wells, pipe, or other on-site methods; the off-site transportation of materials; exploration activities; construction activities at a construction site; or any other exception adopted by the commission in its regulations.

(aa) "Topsoil" means the organic or inorganic matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(bb) "Toxic material" means any substance present in sufficient concentration or amount to cause significant injury or illness to plant, animal, aquatic or human life.

SOURCES: Laws, 1977, ch. 476, § 3; Laws, 1979, ch. 477, § 43; Laws, 2002, ch. 492, § 3, eff from and after July 1, 2002.

RESEARCH REFERENCES

ALR. Mine tailings as real or personal property. 75 A.L.R.4th 965.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-7. Permit requirement; applicability of law; exceptions and exemptions.

(1) Except as provided in this section, it is unlawful to commence an operation or operate a surface mine without a permit or coverage under a general permit as provided by this chapter.

(2) Except as expressly provided in this section, this chapter shall not apply to:

(a) Excavations made by the owner of land for the owner's own use and not for commercial purposes, where the materials removed do not exceed one thousand (1,000) cubic yards per year and where one (1) acre or less of land is affected;

(b) Excavations made by a public agency on a one-time basis for emergency use at an emergency site if:

(i) The excavation lies in the vicinity of the emergency site and affects less than one-fourth (¼) acre of mined surface area;

(ii) The landowner has signed a statement giving approval for the removal of the materials; and

(iii) The public agency notifies the department as required by the commission within two (2) working days of the removal of the materials;

(c) Operations for any materials on any affected area conducted before April 15, 1978, but this chapter shall apply to any additional land which the operation extended to or encompassed after April 15, 1978;

(d) Operations for any materials that affected four (4) acres or less and were greater than one thousand three hundred twenty (1,320) feet from any other affected area if:

(i) The operation began before July 1, 2002; and

(ii) The operator notified the commission of the commencement, expansion or resumption of the operation before July 1, 2002;

(e) Operations for any materials that affect four (4) acres or less, are greater than one thousand three hundred twenty (1,320) feet from any other affected area and commenced after July 1, 2002, if the operator notifies the department at least seven (7) calendar days before commencement or expansion of the operation as required in regulations adopted by the commission. The seven-day notice prior to mining requirement shall be waived and the operator may begin mining immediately after notifying the department if:

(i) The operator agrees, in the notification, to reclaim the mine site in accordance with the minimum standards adopted by the commission; or

(ii) The exempted operation is conducted for Mississippi Department of Transportation projects or state aid road construction projects funded in whole or in part by public funds; and

(f) Excavations made by the owner of land where the materials removed are transported to another location on that same land without using any public highway, road or street, and where the distance between the excavation and the location where the materials are deposited does not exceed five (5) miles; provided, that the owner of such land has the legal right to the materials.

(3) Exempt operations under paragraph (e) that are conducted for the MDOT projects or state aid road construction projects shall be reclaimed in accordance with the requirements of the Mississippi Standard Specifications for Road and Bridge Construction, Mississippi Department of Transportation or Division of State Aid Road Construction, as applicable. Any operator failing to reclaim as required under this subsection may be subject to the penalties provided in Section 53-7-59(2).

(4) If a landowner refuses to allow the operator to complete reclamation in accordance with minimum standards or interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with minimum

standards, the landowner shall assume the exempt notice and shall be responsible for any reclamation.

(5) All operations exempted under Sections 53-7-7(2)(d) and 53-7-7(2)(e) shall be subject to the prohibitions on mining in certain areas contained in Sections 53-7-49 and 53-7-51 and may be subject to the penalties in Section 53-7-59(2) for any violation of those sections.

(6) Any operator conducting operations exempted under Section 53-7-7(2)(b) or 53-7-7(2)(e) failing to notify the department in accordance with the regulations of the commission, may be subject to penalties provided in Section 53-7-59(2). Any operator exempted under Section 53-7-7(2)(e) who agrees in the notification to reclaim and fails to reclaim in accordance with that paragraph may be subject to penalties provided in Section 53-7-59(2).

SOURCES: Laws, 1977, ch. 476, § 4(1, 2); Laws, 2002, ch. 492, § 4; Laws, 2009, ch. 394, § 1, eff from and after July 1, 2009.

§ 53-7-9. Administration and enforcement of chapter.

The department is designated as the agency to administer this chapter. The commission is designated as the body to enforce this chapter, including, but not limited to, the issuance of administrative and penalty orders, promulgation of regulations regarding matters addressed in this chapter, and designation of lands unsuitable for surface mining. The Permit Board is designated as the body to issue, deny, modify, revoke, transfer, cancel, rescind, suspend and reissue permits under this chapter.

SOURCES: Laws, 1977, ch. 476, § 4(3); Laws, 2002, ch. 492, § 5, eff from and after July 1, 2002.

§ 53-7-11. Rules and regulations; public hearing; notice; comments.

(1) The commission may adopt, modify, repeal, after due notice and hearing, and where not otherwise prohibited by federal or state law, make exceptions to and grant exemptions and variances from and may enforce rules and regulations pertaining to surface mining and reclamation operations to implement the provisions of this chapter.

(2) Adopting rules and regulations, the commission shall comply with the Mississippi Administrative Procedures Law, and in addition, may hold a public hearing. Notice of the date, time, place and purpose of the hearing shall be given thirty (30) days before the scheduled date of the hearing as follows:

(a) By mail to:

(i) All operators known by the commission to be actively engaged in surface mining in the state;

(ii) Persons who request notification of proposed actions regarding rules and regulations and any other person the commission deems appropriate; and

(iii) The Mississippi Soil and Water Conservation Commission, the Mississippi Department of Environmental Quality, Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Forestry Commission, Mississippi Department of Archives and History, Mississippi Department of Transportation and the Mississippi Department of Agriculture and Commerce.

(b) By publication once weekly for three (3) consecutive weeks in a newspaper having general circulation in the State of Mississippi.

(3) Any person may submit written comments or appear and offer oral comments at the public hearing. The commission shall consider all comments and relevant data presented at the hearing before final adoption of rules and regulations under this chapter. The failure of any person to submit comments within a time period as established by the commission shall not preclude action by the commission.

SOURCES: Laws, 1977, ch. 476, § 5(1); Laws, 1984, ch. 488, § 320; Laws, 2000, ch. 516, § 96; Laws, 2002, ch. 492, § 6, eff from and after July 1, 2002.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Mississippi Administrative Procedures Law, see § 25-43-1.101 et seq.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals §§ 152, 155.

§§ 53-7-13, 53-7-15. Repealed.

Repealed by Laws, 2002, ch. 492, §§ 35, 36, eff from and after July 1, 2002.

§ 53-7-13. [Laws, 1977, ch. 476, § 5(2).]

§ 53-7-15. [Laws, 1977, ch. 476, § 5(3, 4).]

Editor's Note — Former § 53-7-13 required the Board of the Geological, Economic and Topographical Survey to establish regulations on surface mining.

Former § 53-7-15 required the Board of the Geological, Economic and Topographical Survey to hold certain hearings.

§ 53-7-17. Commission to retain exclusive jurisdiction on passage of federal strip mining legislation.

Upon the passage of any federal surface mining legislation, the commission shall take steps necessary to establish the exclusive jurisdiction of the commission over the regulation of surface mining and reclamation operations in this state.

SOURCES: Laws, 1977 ch. 476, § 5(5); Laws, 2002, ch. 492, § 7, eff from and after July 1, 2002.

§ 53-7-19. Powers and duties of commission.

The commission shall have the following powers and duties regarding surface mining:

(a) To develop a statewide, comprehensive policy for the regulation of surface mining and reclamation consistent with this chapter;

(b) To hold public and formal hearings, to issue notices of hearing, to administer oaths or affirmations, to issue subpoenas requiring the appearance of witnesses requested by any party and compel their attendance, and to require production of any books, papers, correspondence, memoranda, agreements or other documents or records that are relevant or material to the administration of this chapter and to take testimony as deemed necessary;

(c) To issue, modify or revoke orders requiring an operator to take any actions necessary to comply with this chapter, rules and regulations adopted under this chapter or any permit or coverage under a general permit required by this chapter;

(d) To enter on and inspect for the purpose of assuring compliance with the terms of this chapter, in person or by an authorized agent of the department, any surface mining operation subject to this chapter;

(e) To conduct, or cause to be conducted, encourage, request and participate in studies, surveys, investigations, research, experiments, training and demonstrations by contract, grant or otherwise; to prepare and require permittees to prepare reports; and to collect information and disseminate to the public information such as is deemed reasonable and necessary for the proper enforcement of this chapter;

(f) To apply for, receive and expend any grants, gifts, loans or other funds made available from any source for the purpose of this chapter;

(g) To advise, consult, cooperate with, or enter into contracts or grants with federal, state and local boards and agencies having pertinent expertise for the purpose of obtaining professional and technical services necessary to carry out this chapter;

(h) To enter into contracts with persons to reclaim land under this chapter;

(i) To order the immediate cessation of any ongoing surface mining operation being conducted with or without a permit or coverage under a general permit if it finds that the operation endangers the health or safety of the public or creates imminent and significant environmental harm;

(j) To institute and maintain all court actions necessary to obtain the enforcement of any written order of the commission;

(k) To recognize the differences in the various materials, taking into consideration the commercial value of the material and the nature and size of operation necessary to extract the deposit, in regulating surface mining operations;

(*l*) To authorize the executive director to discharge or exercise any power or duty granted to the commission by this chapter; and

(m) To perform any other duties and acts required or provided for by this chapter.

SOURCES: Laws, 1977, ch. 476, § 6; Laws, 1979, ch. 477, § 44; Laws, 2002, ch. 492, § 8, eff from and after July 1, 2002.

Cross References — Subpoenas of witnesses in civil cases generally, see § 13-3-93.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-21. Surface mining permits; issuance; certificate of compliance.

(1) Unless exempted under Section 53-7-7, no operator shall engage in surface mining without having first obtained coverage under a general permit or having obtained from the Permit Board a permit for each operation. The permit or coverage under a general permit shall authorize the operator to engage in surface mining upon the area of land described in the application for a period of either five (5) years or longer period of time as deemed appropriate by the Permit Board from the date of issuance or until reclamation of the affected area is completed and the reclamation bond is finally released, whichever comes first.

(2) Each operator holding a permit shall annually, before the anniversary date of the permit, file with the department a certificate of compliance in which the operator, under oath, shall declare that the operator is following the approved mining and reclamation plan and is abiding by this chapter and the rules and regulations adopted under this chapter.

SOURCES: Laws, 1977, ch. 476, § 7(1, 2); Laws, 2002, ch. 492, § 9, eff from and after July 1, 2002.

Cross References — Definitions relating to surface mining and reclamation of land, see § 53-7-5.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

§ 53-7-23. Issuance of general permits; conditions; application for permit; reclamation plan; review of application.

(1) The Permit Board may issue general permits consistent with regulations adopted by the commission to cover those surface mining operations

deemed appropriate by the Permit Board. Conditions in any general permit shall provide that no operation shall be conducted on lands designated as unsuitable for mining and that each operator shall submit a proposed initial reclamation plan and a performance bond in an amount sufficient to properly reclaim the permit area. The Permit Board may include other conditions as required by the rules and regulations of the commission.

(2) Before commencing any operation for which coverage under a general permit may be obtained, each applicant for coverage under a general permit shall submit to the department an application in the form and containing the information as the department shall specify, including a copy of the proposed initial reclamation plan and except as otherwise provided by this section, a performance bond in an amount proposed by the applicant to be sufficient to properly reclaim the permit area. As the operation progresses, the applicant may revise the reclamation plan and submit the revised plan to the department for approval. The amount of the proposed performance bond shall not be less than the minimum provided in Section 53-7-37.

(3) The Permit Board shall issue a general permit for surface mining operations having a permitted area of more than four (4) acres but less than ten (10) acres which are conducted for projects funded in whole or in part by public funds for the Mississippi Department of Transportation or the Division of State Aid Road Construction. The general permit issued under this subsection shall require that all materials obtained from an operation covered under this general permit shall be used exclusively on the Mississippi Department of Transportation or Division of State Aid Road Construction project and that no materials from an operation covered under this permit may be provided or sold for any other purpose. The Permit Board shall consult with the Mississippi Department of Transportation on the development of this general permit. An applicant for a coverage under a general permit issued under this subsection shall submit an application for coverage and a proposed initial reclamation plan as required by this section, but the applicant shall not be required to post a performance bond under this section, if the applicant submits a copy of the bond posted with the Mississippi Department of Transportation or the Division of State Aid Road Construction. The Mississippi Department of Transportation or the Division of State Aid Road Construction shall not release the bond until all reclamation requirements of the general permit issued under this section have been met. No operation conducted under a general permit issued under this subsection shall be conducted in lands designated as unsuitable for mining under Section 53-7-49 or 53-7-51. The Permit Board may include other conditions as required by the rules and regulations of the commission in the general permit issued under this section.

(4) Within three (3) working days after receiving the application for coverage under a general permit, the department shall review the application, determine if the proposed surface mining operation is eligible for coverage under a general permit, and notify the applicant in writing accordingly. Operations may commence at the mining site after the operator receives notice of coverage.

SOURCES: Laws, 1977, ch. 476, § 7(3); Laws, 1979, ch. 477, § 45; Laws, 2002, ch. 492, § 10, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-25. General permit application fees.

(1) Each application for a surface mining permit and for coverage under a general permit shall be accompanied by an application fee in accordance with a published fee schedule adopted by the commission. The application fee shall not be less than One Hundred Dollars ($100.00) plus Ten Dollars ($10.00) per acre included in the application. The total application fee shall not exceed Five Hundred Dollars ($500.00). The commission, in considering regulations on the fee schedule, shall recognize the difference in the various materials, taking into consideration the commercial value of the material and the nature and size of operation necessary to extract it.

(2) All state agencies, political subdivisions of the state, and local governing bodies shall be exempt from all fees required by this chapter.

(3) Upon submission of the certificate of compliance required under Section 53-7-21, each operator shall pay a fee of Fifty Dollars ($50.00).

SOURCES: Laws, 1977, ch. 476, § 7(4); Laws, 1979, ch. 477, § 46; Laws, 2002, ch. 492, § 11, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-27. Submission of application for permit, proposed initial reclamation plan, and performance bond; form of application.

(1) Before commencing any operation for which a permit is required, each applicant for a permit shall submit to the Permit Board an application, a proposed initial reclamation plan and a performance bond in an amount proposed to be sufficient by the applicant to reclaim the permit area.

(2) The application shall be in the form prescribed by the commission and shall contain the following information:

(a) A legal description of the tract or tracts of land in the affected area and one or more maps or plats of adequate scale to clearly portray the location of the affected area. The description shall contain sufficient information so that the affected area may be located and distinguished from other lands and shall identify the access from the nearest public road;

(b) The approximate location and depth of the deposit in the permit area and the total number of acres in the permit area;

(c) The name, address and management officers of the permit applicant and any affiliated persons who shall be engaged in the operations;

(d) The name and address of any person holding legal and equitable interests of record, if reasonably ascertainable, in the surface estate of the permit area and in the surface estate of land located within five hundred (500) feet of the exterior limits of the permit area;

(e) The name and address of any person residing on the property of the permit area at the time of application;

(f) Current or previous surface mining permits held by the applicant, including any revocations, suspensions or bond forfeitures;

(g) The type and method of operation, the engineering techniques and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the permit area, the anticipated hydrologic consequences of the mining operation, and the proposed use of explosives for blasting, including the nature of the explosive, the proposed location of the blasting and the expected effect of the blasting;

(h) A notarized statement showing the applicant's legal right to surface mine the affected area;

(i) The names and locations of all lakes, rivers, reservoirs, streams, creeks and other bodies of water in the vicinity of the contemplated operations which may be affected by the operations and the types of existing vegetative cover on the area affected thereby and on adjoining lands within five hundred (500) feet of the exterior limits of the affected area;

(j) A topographical survey map showing the surface drainage plan on and away from the permit area;

(k) The surface location and extent of all existing and proposed waste and spoil piles, cuts, pits, tailing dumps, ponds, borrow pits, evaporation and settling basins, roads, buildings, access ways, workings and installations sufficient to provide a reasonably clear and accurate portrayal of the existing surface conditions and the proposed mining operations;

(*l*) If the surface and mineral estates, or any part of those estates, in land covered by the application, have been severed and are owned by separate owners, the applicant shall provide a notarized statement subscribed to by each surface owner and lessee of those lands, unless the lease or other conveyance to the applicant specifically states the material to be mined by the operator granting consent for the applicant to initiate and conduct surface mining, exploration and reclamation activities on the land;

(m) Except for governmental agencies, a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in the State of Mississippi covering all operations of the applicant in this state and affording bodily injury protection and property damage protection in an amount not less than the following:

(i) One Hundred Thousand Dollars ($100,000.00) for all damages because of bodily injury sustained by one (1) person as the result of any one (1) occurrence, and Three Hundred Thousand Dollars ($300,000.00) for all damages because of bodily injury sustained by two (2) or more persons as the result of any one (1) occurrence; and

(ii) One Hundred Thousand Dollars ($100,000.00) for all claims arising out of damage to property as the result of any one (1) occurrence including completed operations;

The policy shall be maintained in full force and effect during the term of the permit, including the length of all reclamation operations.

(n) A copy of a proposed initial reclamation plan prepared under Section 53-7-31; and

(o) Any other information needed to clarify the required parts of the application.

SOURCES: Laws, 1977, ch. 476, § 8(1); Laws, 2002, ch. 492, § 12, eff from and after July 1, 2002.

Cross References — Cease and desist order for Class II operations not in compliance with information stated in notice of intent, see § 53-7-23.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

§ 53-7-29. Filing of copies of permit applications for public inspection with certain state agencies; review of application by agencies; comments and recommendations.

(1) The department shall file a copy of each permit application for public inspection with the chancery clerk of the county where any portion of the operation is proposed to occur after deleting the confidential information according to Section 53-7-75.

(2) The department shall submit copies, excluding all confidential information, of the permit application as soon as possible to: (a) the Mississippi Soil and Water Conservation Commission, Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Forestry Commission, Mississippi Department of Environmental Quality, Mississippi Department of Archives and History, Mississippi Department of Transportation, Mississippi State Oil and

Gas Board and Mississippi Department of Agriculture and Commerce; (b) any other state agency whose jurisdiction the department believes the particular mining operation may affect; and (c) any person who requests in writing a copy of the application; and (d) the owner of the land. The department shall require payment of a reasonable fee established by the commission for reimbursement of the costs of reproducing and providing the copy.

(3) Each agency shall review the permit application and submit, within fifteen (15) days of receipt of the application, any comments, recommendations and evaluations as the agency deems necessary and proper based only upon the effect of the proposed operation on matters within the agency's jurisdiction. The comments shall include a listing of permits or licenses required under the agency's jurisdiction. Comments and recommendations shall be made a part of the record and one (1) copy shall be furnished to the applicant. All comments and recommendations shall be considered by, but shall not be binding upon, the Permit Board. The failure of any agency to submit comments shall not preclude action by the Permit Board.

SOURCES: Laws, 1977, ch. 476, § 8(2, 3); Laws, 1984, ch. 488, § 321; Laws, 2000, ch. 516, § 97; Laws, 2002, ch. 492, § 13, eff from and after July 1, 2002.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

JUDICIAL DECISIONS

1. In general.

Sections 53-7-29 and 53-7-33 [repealed], which state that the soil and water conservation districts "shall" submit written comments, recommendations and evaluations regarding proposed mining and reclamation plans, require the districts to submit written comments, recommendations and evaluations of mining permit applications. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

§ 53-7-31. Reclamation plans; contents; reclaiming lands in lieu of lands included in notice of intent.

(1) A reclamation plan shall be developed in a manner consistent with local, physical, environmental and climatological conditions and current mining and reclamation technology. A proposed initial reclamation plan submitted as part of a permit application shall include the following information:

(a) The identification of the proposed affected area, accompanied by a detailed topographic map on a scale required by regulation showing:

(i) The proposed affected area, the location of any stream or standing body of water into which the area drains, the location of drainways and any planned siltation traps and other impoundments, and the location of access roads to be prepared or used by the operator in the mining operation;

(ii) The location of any buildings, cemeteries, public highways, railroad tracks, gas and oil wells, publicly owned land, sanitary landfills, officially designated scenic areas, utility lines, underground mines, transmission lines or pipelines within the affected area or within five hundred (500) feet of the exterior limits of the affected area;

(iii) The approximate location of the cuts or excavations to be made in the surface and the estimated location and height of spoil banks, and the total number of acres involved in the affected area;

(iv) The date the map was prepared and a statement of its accuracy by the person responsible for its preparation.

(b) The condition of the land to be covered by the permit before any mining, including:

(i) The land use existing at the time of the application, and if the land has a history of previous mining, the land use, if reasonably ascertainable, which immediately preceded any mining; and

(ii) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetative cover.

(c) The capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses.

(d) A description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation.

(e) The steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications.

(f) A general timetable that the applicant estimates will be necessary for accomplishing the major events contained in the reclamation plan.

(g) Any other information as the Permit Board shall determine to be reasonably necessary to effectuate the purposes of this chapter.

(2) The Permit Board may, in its discretion, authorize the reclamation of lands in lieu of the lands included in the permit application. The acreage of the authorized lieu lands reclaimed shall not be less than the acreage of the lands in the permit application. Any applicant who proposes to reclaim lands in lieu of those lands included in the permit application shall state that fact in the application or subsequent or amended application and shall submit the reclamation plan accordingly. The Permit Board shall not authorize the reclamation of lieu lands unless the applicant submits with the reclamation plan a notarized statement of each surface owner and lessee of all lands included in the permit application. The statement shall contain the consent of each surface owner and lessee for the reclamation of the proposed lieu lands. If the Permit Board does not authorize the reclamation of the lieu lands, the applicant shall submit a reclamation plan for the lands contained in the permit application.

SOURCES: Laws, 1977, ch. 476, § 9; Laws, 2002, ch. 492, § 14, eff from and after July 1, 2002.

Cross References — Requirement that reclamation plan be submitted along with application for surface mining permit, see § 53-7-27.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

RESEARCH REFERENCES

ALR. Statutory or contractual obligation to restore surface after strip or other surface mining. 1 A.L.R.2d 575.

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 154.

1 Am. Jur. Pl & Pr Forms (Rev), Adjoining Landowners, Form 4.1 (complaint, petition, or declaration-allegation-Relative situation of parties); Form 4.2 (complaint, petition, or declaration-allegation-Interest of plaintiff); Form 4.3 (complaint, petition, or declaration-allegation-duty of defendant); Form 4.4 (complaint, petition, or declaration-allegation-breach of duty by defendant); Form 20.1 (complaint, petition, or declaration-allegation-negligence in excavation).

§ 53-7-33. Repealed.

Repealed by Laws, 2002, ch. 492, § 37, eff from and after July 1, 2002. [Laws, 1977, ch. 476, § 10, eff from and after April 15, 1978.]

Editor's Note — Former § 53-7-33 required soil and water conservation commissioners to submit written recommendations on reclamation plans affecting their districts.

§ 53-7-35. Reclamation standards and methods; alternative methods; concurrent reclamation; continuing right of entry; action on bond.

(1) Any permit issued under this chapter shall require operations to comply with all applicable reclamation standards of this chapter. Reclamation standards shall apply to all operations, exploration activities and reclamation operations covered by this chapter and shall require the operator at a minimum to:

(a) Conduct operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered; and, in keeping with the intent of maximizing the value of mined land, stockpiles of commercially valuable material may remain, if they are ecologically stable. Stockpiling shall be subject to rules and regulations adopted by the commission;

(b) Restore the affected area so that it may be used for a useful, productive and beneficial purpose, including an agricultural, grazing, commercial, residential or recreational purpose, including lakes, ponds, wetlands, wildlife habitat, or other natural or forested areas;

(c) Conduct water drainage and silt control for the affected area to strictly control soil erosion, damage to adjacent lands and pollution of waters of the state, both during and following the mining operations. Before, during and for a reasonable period after mining, all drainways for the affected area shall be protected with silt traps or dams of approved design as directed by the regulations. The operator may impound water to provide wetlands, lakes or ponds of approved design for wildlife, recreational or water supply purposes, if it is a part of the approved reclamation plan;

(d) Remove or cover all metal, lumber and other refuse, except vegetation, resulting from the operation;

(e) Regrade the area to the nearest approximate original contour or rolling topography, and eliminate all highwalls and spoil piles, except as provided in an approved reclamation plan. Lakes, ponds or wetlands may be constructed, if part of an approved reclamation plan;

(f) Stabilize and protect all affected areas sufficiently to control erosion and attendant air and water pollution;

(g) Remove the topsoil, if any, from the affected area in a separate layer, and place it on any authorized lieu lands to be reclaimed or replace it on the backfill area. If not utilized immediately, the topsoil shall be segregated in a separate pile from other spoil. If the topsoil is not replaced on a backfill area of authorized lieu lands within a time short enough to avoid deterioration, the topsoil shall be protected by a successful cover of plants or by other means approved by the Permit Board. If topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator may petition the Permit Board for permission to be exempt from the requirement s for the removal, segregation and preservation of topsoil and to remove, segregate and preserve in a like manner other strata which is best able to support vegetation or to mix strata, if that mixing can be shown to be equally suitable for revegetation requirements;

(h) Replace, if required, available topsoil or the best available subsoil on top of the land to be reclaimed or on top of authorized lieu lands being reclaimed;

(i) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(i) Avoiding acid or other toxic mine drainage by using measures such as, but not limited to:

1. Preventing or removing water from contact with toxic-material producing deposits;

2. Treating drainage to reduce toxic material content; and

3. Casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic material drainage from entering ground and surface waters;

(ii) Conducting operations to prevent unreasonable additional levels of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(iii) Removing temporary or large siltation structures from drainways, consistent with good water conservation practices, after disturbed areas are revegetated and stabilized;

(iv) Performing any other actions as the commission may prescribe under rules and regulations adopted under this chapter;

(j) Stabilize any waste piles;

(k) Incorporate current engineering practices for the design and construction of water retention structures for the disposal of mine wastes, processing wastes or other liquid or solid wastes which, at a minimum, shall be compatible with the requirements of applicable state and federal laws and regulations, insure that leachate will not pollute surface or ground water, and locate water retention structures so as not to endanger public health and safety should failure occur;

(*l*) Insure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters or combustion;

(m) Insure that construction, maintenance and postmining conditions of access roads into and across the permit area will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property. The Permit Board may authorize the retention after mining of certain access roads if compatible with the approved reclamation plan;

(n) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to a channel where the construction would seriously alter the normal flow of water;

(o) Revegetate the affected area with plants, approved by the department, to attain a useful, productive and beneficial purpose, including an agricultural, grazing, industrial, commercial, residential or recreational purpose, including lakes, ponds, wetlands, wildlife habitat or other natural or forested areas;

(p) Assume responsibility for successful revegetation for a period of two (2) years beyond the date of initial bond release on any bond or deposit held by the department as provided by Section 53-7-67;

(q) Assure with respect to permanent impoundments of water as part of the approved reclamation plan that:

(i) The size of the impoundment and the availability of water are adequate for its intended purpose;

(ii) The impoundment dam construction will meet the requirements of applicable state and federal laws;

(iii) The quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(iv) Final grading will provide adequate safety and access for anticipated water users;

(v) Water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners; and

(r) Protect off-site areas from slides or damage occurring during the surface mining and reclamation operations, and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(2) The purpose of this section is to cause the affected area to be restored to a useful, productive and beneficial purpose. A method of reclamation other than that provided in this section may be approved by the Permit Board if the Permit Board determines that the method of reclamation required by this section is not practical and that the alternative method will provide for the affected area to be restored to a useful, productive and beneficial purpose. If an alternative method of reclamation is generally applicable to all operations involving a particular material, the commission may promulgate appropriate rules and regulations for use of the alternative method.

(3) Each operator, except as authorized by the Permit Board, shall perform reclamation work concurrently with the conduct of the mining operation where practical. The fact that an operator will likely redisturb an area shall be cause for the Permit Board to grant an exception from the requirement of concurrent reclamation.

(4) The operator and, in case of bond forfeiture, the department or its designee, shall have the continuing right to enter and inspect the affected area in the reclamation plan and to perform any reclamation measures required properly to complete the reclamation plan.

(5)(a) If the commission finds that (i) reclamation of the affected area is not proceeding in accordance with the reclamation plan and that the operator has failed within thirty (30) days after notice to commence corrective action or (ii) revegetation has not been properly completed in conformance with the reclamation plan within two (2) years or longer, if required by the commission, after termination of mining operations or upon revocation of the permit, or if the Permit Board revokes a permit, the commission may initiate proceedings against the bond or deposit filed by the operator. The proceedings shall not be commenced with respect to a surety bond until the surety has been given sixty (60) days to commence and a reasonable opportunity to begin and complete corrective action.

(b) A forfeiture proceeding against any performance bond or deposit shall be commenced and conducted according to Sections 49-17-31 through 49-17-41.

(c) If the commission orders forfeiture of any performance bond or deposit, the entire sum of the performance bond or deposit shall be forfeited to the department. The funds from the forfeited performance bond or deposit shall be placed in the appropriate account in the fund and used to pay for reclamation of the permit area and remediation of any off-site damages resulting from the operation. Any surplus performance bond or deposit funds shall be refunded to the operator or corporate surety.

(d) Forfeiture proceedings shall be before the commission and an order of the commission under this subsection is a final order. If the commission determines that forfeiture of the performance bond or deposit should be ordered, the department shall have the immediate right to all funds of any performance bond or deposit, subject only to review and appeals allowed under Section 49-17-41.

(e) If the operator cannot be located for purposes of notice, the department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the operator's last known address. The department shall also publish notice of the forfeiture proceeding in a manner as required in regulation by the commission. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

(f) If the performance bond or deposit is insufficient to cover the costs of reclamation of the permit area in accordance with the approved reclamation plan or remediation of any off-site damages, the commission may initiate a civil action to recover the deficiency amount in the county in which the surface mining operation is located.

(g) If the commission initiates a civil action under this section, the commission shall be entitled to any sums necessary to complete reclamation of the permit area in accordance with the approved reclamation plan and remediate any off-site damages resulting from that operation.

(6) If a landowner, upon termination or expiration of a lease, refuses to allow the operator to enter onto the property designated as the affected area to conduct or complete reclamation in accordance with the approved reclamation plan, or if the landowner interferes with or authorizes a third party to disturb or interfere with reclamation in accordance with the approved reclamation plan, the landowner shall assume the permit and shall file a reclamation plan and post a performance bond as required under this chapter.

SOURCES: Laws, 1977, ch. 476, § 11; Laws, 1979, ch. 477, § 47; Laws, 2002, ch. 492, § 15, eff from and after July 1, 2002.

Cross References — Definitions relating to surface mining and reclamation of land, see § 53-7-5.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

RESEARCH REFERENCES

ALR. Duty of oil or gas lessee to restore surface of leased premises upon termination of operations. 62 A.L.R.4th 1153.

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 154.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-37. Performance bonds.

(1) Before a permit is issued by the Permit Board, the applicant shall file with the department in the manner and form required by the commission a bond for performance payable to the commission and conditioned on full and satisfactory performance of the requirements of this chapter and the permit. The bond shall not be less than Five Hundred Dollars ($500.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00) for each estimated acre of the permit area of the respective operation.

(2) The bond shall be executed by the applicant and a corporate surety licensed to do business in the state. The applicant may elect to deposit the following in lieu of the surety bond: cash, negotiable bonds of the United States government or the state, assignment of real or personal property or a savings account acceptable to the department, negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) or a similar federal banking or savings and loan insurance organization. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the permit area. Cash, negotiable bonds, negotiable certificates of deposit, letter of credit, assignment of real or personal property or a savings account or other securities shall be deposited on the same terms as the terms on which surety bonds may be deposited.

(3) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or deposit may be increased or decreased by the Permit Board from time to time to reflect changes in the cost of future reclamation of land mined or to be mined subject to the limitations on the amount of the bond set forth in this section.

(4) All state agencies, political subdivisions of the state and local governing bodies shall be exempt from the bonding requirements of this section.

SOURCES: Laws, 1977, ch. 476, § 12; Laws, 2002, ch. 492, § 16, eff from and after July 1, 2002.

Cross References — Applicability of this section to bonds required for Class II permits, see § 53-7-23.

§ 53-7-39. Initial review of application by department; department to make recommendation to Permit Board; on-site inspection of proposed area as condition of granting permit.

(1) The department shall conduct an initial review of a completed permit application within thirty (30) days following receipt of the completed application. The department shall make a recommendation to the Permit Board on the permit application no later than the next regularly scheduled Permit Board meeting following the thirty-day initial review period, unless a public hearing is held on the application or the applicant agrees in writing to an additional time frame. If a public hearing is held, the department shall make its recommendation at the next regularly scheduled Permit Board meeting following the public hearing, if practicable.

(2) An on-site inspection of the proposed affected area shall be made by the department within the thirty-day time period specified in subsection (1) of this section, and before a permit is issued.

SOURCES: Laws, 1977, ch. 476, § 13(1, 2); Laws, 2002, ch. 492, § 17, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals §§ 156, 157.

CJS. 58 C.J.S., Mines and Minerals § 283.

§ 53-7-41. Authority of Permit Board to issue, reissue, deny, modify, revoke, cancel, rescind, suspend, or transfer permit; grounds for denial; public hearing; board may authorize executive director to make permit decisions.

(1) The Permit Board, based upon the provisions of this chapter, may issue, reissue, deny, modify, revoke, cancel, rescind, suspend or transfer a permit for a surface mining operation. The head of the Office of Geology and Energy Resources shall abstain in any action taken by the Permit Board under this chapter.

(2) The Permit Board shall issue a permit if the Permit Board determines that the applicant and completed application comply with the requirements of this chapter.

(3) The Permit Board may deny a permit if:

(a) The Permit Board finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(b) Any part of the proposed operation lies within an area designated as unsuitable for surface mining as designated by Section 53-7-49 or 53-7-51;

(c) The Permit Board finds that the proposed mining operation will cause pollution of any water of the state or of the ambient air of the state in violation of applicable state and federal laws and regulations;

(d) The applicant has had any other permit issued under this chapter revoked, or any bond or deposit posted to comply with this chapter forfeited, and the conditions causing the permit to be revoked or the bond or deposit to be forfeited have not been corrected to the satisfaction of the Permit Board;

(e) The Permit Board determines that the proposed operation will endanger the health and safety of the public or will create imminent environmental harm;

(f) The operation will likely adversely affect any public highway or road unless the operation is intended to stabilize or repair the public road or highway; or

(g) The applicant is unable to meet the public liability insurance or performance bonding requirements of this chapter.

(4) The Permit Board shall deny a permit if the Permit Board finds by clear and convincing evidence on the basis of the information contained in the permit application or obtained by on-site inspection that the proposed operation cannot comply with this chapter or rules and regulations adopted under this chapter or that the proposed method of operation, road system construction, shaping or revegetation of the affected area cannot be carried out in a manner consistent with this chapter and applicable state and federal laws, rules and regulations.

(5) The Permit Board may hold a public hearing to obtain comments from the public on its proposed action. If the Permit Board holds a public hearing, the Permit Board shall publish notice and conduct the hearing as provided in Section 49-17-29.

(6) The Permit Board may authorize the executive director, under any conditions the Permit Board may prescribe, to make decisions on permit issuance, reissuance, modification, rescission or cancellation under this chapter. A decision by the executive director is a decision of the Permit Board and shall be subject to formal hearing and appeal as provided in Section 49-17-29. The executive director shall report all permit decisions to the Permit Board at its next regularly scheduled meeting and those decisions shall be deemed as recorded in the minutes of the Permit Board at that time.

(7) The Permit Board may cancel a permit at the request of the operator, if the operator does not commence operations under the permit by stripping, grubbing or mining any part of the permit area. The Permit Board may rescind a permit, if, because of a change in post-mining use of the land by the landowner, the completion of the approved reclamation plan by the operator is no longer feasible. If a permit is canceled or rescinded, the remaining portion of the bond or deposit required under Section 53-7-37 shall be returned to the operator as soon as possible.

SOURCES: Laws, 1977, ch. 476, § 13(3); Laws, 2002, ch. 492, § 18, eff from and after July 1, 2002.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 283.

§ 53-7-43. Applications for modification, transfer, or reissuance of permit; right of successive reissuance upon expiration; term of reissuance; continuance of operation during reissuance process.

(1) Applications for the modification, transfer or reissuance of any surface mining permit issued under this chapter may be filed with the department. The Permit Board may modify any surface mining permit to increase or decrease the permit area and shall require an increase in the performance bond and a modified reclamation plan for any expanded area.

(2) Any permit issued under this chapter shall carry with it the right of successive reissuance upon expiration for areas within the boundaries of the existing permit. The operator may apply for reissuance and that permit shall be reissued, except as provided in this subsection. On application for reissuance the burden of proving that the permit should not be reissued shall be on the opponents of reissuance or the department. If the opponents to reissuance or the department establish and the Permit Board finds, in writing, that the operator is not satisfactorily meeting the terms and conditions of the existing permit or the present surface mining and reclamation operation is not in compliance with this chapter and the rules and regulations issued under this chapter, the Permit Board shall not reissue the permit.

(3) Any permit reissuance shall be for a term not to exceed the term of the original permit established by this chapter. Application for permit reissuance shall be filed with the Permit Board at least sixty (60) days before the expiration of the permit. If an application for reissuance is timely filed, the operator may continue surface mining operations under the existing permit until the Permit Board takes action on the reissuance application.

SOURCES: Laws, 1977, ch. 476, § 14; Laws, 2002, ch. 492, § 19, eff from and after July 1, 2002.

§ 53-7-45. Review of Permit Board action or decision.

Any interested party may seek a review or an appeal of any action or decision of the Permit Board under Sections 53-7-41 and 53-7-43 as provided in Section 49-17-29.

SOURCES: Laws, 1977, ch. 476, § 15; Laws, 1979, ch. 477, § 48; Laws, 1984, ch. 488, § 322; Laws, 2000, ch. 516, § 98; Laws, 2002, ch. 492, § 20, eff from and after July 1, 2002.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Applicability of this section to the procedure for annulling a determination that a mine is exempt from the provisions of this chapter, see § 53-7-7.

Power of the board to conduct public hearings pursuant to the requirements of this section, see § 53-7-19.

Surface mining permits and notice of intent; Class I permit; hearing; certificate of compliance, see § 53-7-21.

Applicability of this section to a hearing on a Class II permit, see § 53-7-23.

Requirement that copy of notice of hearing be submitted along with application for surface mining permit, see § 53-7-27.

Applicability of this section to procedure for amending reclamation plan, see § 53-7-43.

Applicability of this section to the procedure for permitting surface mining on park land, see § 53-7-47.

Applicability of this section to procedure for designating land as unsuitable for surface mining and modifying, amending or terminating such designation, see § 53-7-51.

Penalty for willful failure to comply with an order, see § 53-7-61.

Applicability of this section to the procedure for release of a bond, see § 53-7-67.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 283.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-47. Mining prohibited in national and state park lands.

To the extent that the commission, the Permit Board and the department may exercise jurisdiction over the areas specified in this section, no surface mining operation shall be conducted on lands which are part of a national park, national monument, national historic landmark, any property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild or scenic river, state scenic stream, state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark or city or county park, forest or historical area. For good cause shown and after any public hearing the commission may elect to hold, the commission may make an exception to this section.

SOURCES: Laws, 1977, ch. 476, § 16(1); Laws, 2002, ch. 492, § 21, eff from and after July 1, 2002.

§ 53-7-49. Designation of certain lands as unsuitable for surface mining; criteria for designation.

(1) With the assistance of the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources, the commission shall identify and designate as unsuitable certain lands for all or certain types of surface mining. The commission shall adopt rules and regulations to provide reasonable notice to prospective operators and any other interested parties of areas which might be designated as unsuitable for surface mining. The commission may designate areas as unsuitable for surface mining lands if the commission determines:

(a) The operations will result in significant damage to important areas of historic, cultural or archaeological value or to important natural systems;

(b) The operations will affect renewable resource lands resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, including aquifers and aquifer recharge areas;

(c) The operations are located in areas of unstable geological formations and may reasonably be expected to endanger life and property;

(d) The operations will damage ecologically sensitive areas;

(e) The operations will significantly and adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild or scenic river area, state scenic stream, state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark, or city or county park;

(f) The operations will endanger any public road, public building, cemetery, school, church or similar structure or existing dwelling outside the permit area; or

(g) The operations and the affected area cannot be reclaimed feasibly under the requirements of this chapter.

(2) Unless an operation is exempted under Section 53-7-7(2)(a) or 53-7-7(2)(b), it is unlawful to conduct surface mining operations within an area designated as unsuitable for surface mining under Section 53-7-51 or this section or to conduct surface mining operations in rivers, lakes, bayous, intermittent or perennial streams or navigable waterways, natural or manmade, without a permit or coverage under a general permit issued or reissued consistent with regulations adopted by the commission.

SOURCES: Laws, 1977, ch. 476, § 16(2); Laws, 1984, ch. 488, § 323; Laws, 2000, ch. 516, § 99; Laws, 2002, ch. 492, § 22, eff from and after July 1, 2002.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Cross References — Cease and desist order for Class II operations on lands designated unsuitable for surface mining, see § 53-7-23.

Designation of unsuitability for surface mining as a ground for denying a permit, see § 53-7-41.

JUDICIAL DECISIONS

1. In general.

An order of the Department of Environmental Quality (DEQ) approving a mining company's permit to mine sand and gravel from a river and adjacent land was not supported by substantial evidence where the order was "replete with inaccurate facts and unsubstantiated conclusions," the mining company failed to provide DEQ with a topographical description of the required surface drainage plan, the mining company had no reclamation plan, and the record was devoid of sufficient scientific, geological, or hydrological evidence to support DEQ's conclusion that the property was suitable for mining sand and gravel. American Sand & Gravel Co. v. Tatum, 620 So. 2d 557 (Miss. 1993).

§ 53-7-51. Designation of certain lands as unsuitable for surface mining; petition for modification, amendment or termination of designation; appeal.

(1) The commission, upon petition, may designate an area as unsuitable for mining or modify or terminate the designation of an area as unsuitable for surface mining. The commission, upon its own motion, may terminate the designation of an area as unsuitable for surface mining. The commission may conduct a public hearing on its proposed action in accordance with Section 49-17-33. Before terminating an area as unsuitable for surface mining, the commission shall provide notice as required under Section 53-7-11.

(2) A petition shall contain allegations of facts with supporting evidence. The commission shall make a determination based upon the validity of the facts contained in the petition, and may designate, modify or terminate the designation of the lands included in the petition as unsuitable for mining.

(3) Any person aggrieved by an action of the commission under this section may appeal as provided in Section 49-17-41.

SOURCES: Laws, 1977, ch. 476, § 16(3, 4); Laws, 1979, ch. 477, § 49; Laws, 2002, ch. 492, § 23, eff from and after July 1, 2002.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-53. Records, reports and equipment to be maintained by permittees.

The Permit Board shall require each permittee to:

(a) Establish and maintain appropriate records;

(b) Make reports, the frequency and nature of which shall be prescribed by the commission; and

(c) Install, use and maintain any necessary monitoring equipment for the purpose of observing and determining relevant surface or subsurface effects of the mining operation or reclamation program.

SOURCES: Laws, 1977, ch. 476, § 17(1); Laws, 2002, ch. 492, § 24, eff from and after July 1, 2002.

§ 53-7-55. Inspection by department; inspection reports; procedure on detection of violation.

(1) Authorized representatives of the department, on presentation of appropriate credentials, may enter and inspect any operation or any premises in which records required to be maintained under Section 53-7-53 are located and may at reasonable times, and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this chapter.

(2) Inspections of operations with or without a permit by the department shall occur on an irregular basis at a frequency necessary to insure compliance with this chapter, rules and regulations and the terms and conditions of any permit. Inspections shall occur only during normal operating hours if practical, may occur without prior notice to the permittee or the agents or employees of the permittee, and shall include the filing of an inspection report. The department shall make those reports part of the record and shall provide one (1) copy of the report to the operator. The department shall, as practical, establish a system of rotation of field inspectors.

(3) Each field inspector, on detection of each violation of this chapter, rules and regulations adopted under this chapter or the permit for the operation, shall inform the operator or the operator's agent orally at the time of the inspection and subsequently in writing and shall report any violation in writing to the commission.

SOURCES: Laws, 1977, ch. 476, § 17(2-4); Laws, 1979, ch. 477, § 50; Laws, 2002, ch. 492, § 25, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 156.

CJS. 58 C.J.S., Mines and Minerals § 282.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-57. Inspection by representatives of local soil and water conservation districts; recommendations of progress of reclamation activities.

Any representative of the local soil and water conservation district, upon presentation of appropriate credentials may enter and inspect the operation for the purpose of making recommendations regarding reclamation activities. The representative shall make any recommendations on the progress of reclamation activities in writing to the Permit Board.

SOURCES: Laws, 1977, ch. 476, § 17(5); Laws, 2002, ch. 492, § 26, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 156.

CJS. 58 C.J.S., Mines and Minerals § 282.

§ 53-7-59. Violations; penalties; appeals; commission authorized to pursue civil action for relief; limitation on liability.

(1) Any person who violates, or fails or refuses to comply with this chapter, any rule or regulation or written order of the commission adopted or issued under this chapter or any condition of a permit or coverage under a general permit issued under this chapter may be subject to a civil penalty to be assessed and levied by the commission after notice and opportunity for a formal hearing. In addition to assessing civil penalties under this section, the commission may submit a written statement to the Permit Board recommending that the Permit Board revoke the permit for any operation which is subject to the maximum penalty of Twenty-five Thousand Dollars ($25,000.00). Appeals of any action or decision of the commission may be taken as provided in Section 49-17-41.

(2) Any civil penalty assessed against a permitted, covered or exempt operation and levied by the commission under this section shall not exceed Five Hundred Dollars ($500.00) for the first violation; for subsequent violations committed within three (3) years of the first violation the maximum penalties are: Two Thousand Five Hundred Dollars ($2,500.00) for the second violation, Five Thousand Dollars ($5,000.00) for the third violation and Twenty-five Thousand Dollars ($25,000.00) for the fourth and subsequent violations by the same operator. Multiple violations at a site during one (1) day shall not be cumulative. A separate penalty shall not be assessed for each violation and only one (1) penalty may be assessed for all violations occurring at a site during one (1) day. Each day of a continuing violation shall be a separate violation until corrective action is taken or the operator after notice of the violation is diligently pursuing efforts to achieve compliance in a timely manner. In assessing a penalty under this subsection, the commission shall not consider offenses occurring before July 1, 2002. In addition to the civil penalty authorized under this subsection, the commission may order an operator of a permitted, covered or exempt operation to reclaim the affected area.

(3) Any civil penalty assessed against an operator for mining without a permit and levied by the commission under this section shall not exceed Five Thousand Dollars ($5,000.00) for the first violation, Ten Thousand Dollars ($10,000.00) for the second violation and Twenty-five Thousand Dollars ($25,000.00) for the third and subsequent violations by an operator. In assessing a penalty under this subsection, the commission shall not consider violations occurring before July 1, 2002.

(4) In determining the amount of penalty under this chapter, the commission shall consider at a minimum:

(a) The willfulness of the violation;

(b) Any damage to air, water, land or other natural resources of the state or their uses;

(c) Costs of restoration and abatement;

(d) Economic benefit as a result of noncompliance;

(e) The seriousness of the violation, including any harm to the environment and any hazard to the health, safety and welfare of the public; and

(f) Past performance history.

(5) The commission may institute and maintain a civil action for relief, including a permanent or temporary injunction or any other appropriate order, in the chancery court of the county in which the majority of the surface mining operation is located. The chancery court shall have jurisdiction to provide relief as may be appropriate. Any relief granted by the court to enforce a written order of the commission shall continue in effect until the completion of all proceedings for review of that order under this chapter, unless the chancery court granting the relief sets it aside or modifies it before that time.

(6) Any provisions of this section and chapter regarding liability for the costs of cleanup, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules adopted under that section.

(7) Any violation of this law and the Mississippi Air and Water Pollution Control Law or the Solid Wastes Disposal Law of 1974 shall be assessed a civil penalty under only one (1) of these laws.

SOURCES: Laws, 1977, ch. 476, § 18(1-3); Laws, 1979, ch. 477, § 51; Laws, 1995, ch. 627, § 10; Laws, 2002, ch. 492, § 27, eff from and after July 1, 2002.

Cross References — Applicability of this section to action arising from noncompliance with an order, see § 53-7-65.

RESEARCH REFERENCES

ALR. Liability for pollution of subterranean waters. 38 A.L.R.2d 1265.

Pollution control: Preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices. 49 A.L.R.3d 1239.

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

24 Am. Jur. Pl & Pr Forms (Rev), Waters, Form 191 (complaint, petition or declaration to enjoin pollution caused by strip-mining coal).

18 Am. Jur. Trials 495, Subterranean Water Pollution.

CJS. 58 C.J.S., Mines and Minerals §§ 282, 286, 287.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-61. Criminal penalties for false statement, representation or certification; willful violations.

(1) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter is guilty of a misdemeanor and upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

(2) Any person who knowingly violates, or fails or refuses to comply with this chapter, any rule or regulation or written order of the commission adopted or issued under this chapter, or any condition of a permit issued under this chapter, is guilty of a misdemeanor and, upon conviction, may be subject to a fine of not more than Five Thousand Dollars ($5,000.00).

SOURCES: Laws, 1977, ch. 476, § 18(4, 5) eff from and after April 15, 1978; Laws, 2002, ch. 492, § 28, eff from and after July 1, 2002.

Cross References — Applicability of this section to action arising from noncompliance with an order, see § 53-7-65.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

CJS. 58 C.J.S., Mines and Minerals § 282.

§ 53-7-63. Request for formal hearing by aggrieved party; authority to subpoena witnesses, administer oaths, examine witnesses and conduct hearing.

(1) Unless otherwise expressly provided in this chapter, any interested party aggrieved by any action of the Permit Board taken under this chapter may request a formal hearing before the Permit Board as provided in Section 49-17-29. Any person aggrieved by any action of the commission taken under this chapter may request a formal hearing before the commission as provided in Section 49-17-41. Any person who participated as a party in a formal hearing before the Permit Board may appeal from a final decision of the Permit Board made under this chapter as provided in Section 49-17-29. Any person who participated as a party in a formal hearing before the commission may appeal from a final decision of the commission made under this chapter as provided in Section 49-17-41.

(2)(a) Any public hearing of the Permit Board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Section 49-17-29. Any formal hearing of the Permit Board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the Permit Board under Section 49-17-29.

(b) Any public hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-35. Any formal hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-41.

(3)(a) In conducting any formal hearing under this chapter, the Permit Board shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-29.

(b) In conducting any formal hearing under this chapter the commission shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-41.

SOURCES: Laws, 1977, ch. 476, § 18(6); Laws, 1995, ch. 627, § 11; Laws, 2002, ch. 492, § 29, eff from and after July 1, 2002.

Cross References — Placement of damages recovered in an action on an operator's bond, see § 53-7-35.

Applicability of this section to action arising from noncompliance with an order, see § 53-7-65.

§ 53-7-65. Report or complaint alleging violation; investigation; hearing; order; notice; proof of service; appeal.

(1) When an employee of the department files a report alleging a violation or when any person files a complaint with the commission alleging that any

other person is in violation of this chapter, any rule and regulation issued under this chapter, or any condition of a permit issued under this chapter, the commission shall notify the alleged violator and conduct an investigation of the complaint. Upon finding a basis for the complaint, the commission shall cause written notice of the complaint, specifying the section of law, rule, regulation or permit alleged to be violated and the facts of the alleged violations, to be served upon that person. The commission may require the person to appear before the commission at a time and place specified in the notice to answer the charges. The time of appearance before the commission shall be not less than twenty (20) days from the date of the mailing or service of the complaint, whichever is earlier. If the commission finds no basis for the complaint, the commission shall dismiss the complaint.

(2) The commission shall afford an opportunity for a formal hearing to the alleged violator at the time and place specified in the notice or at another time or place agreed to in writing by both the department and the alleged violator, and approved by the commission. On the basis of the evidence produced at the formal hearing, the commission may enter an order which in its opinion will best further the purposes of this chapter and shall give written notice of that order to the alleged violator and to any other persons which appeared at the formal hearing or made written request for notice of the order. The commission may assess penalties as provided in Section 53-7-59. Any formal hearing under this section shall be of record.

(3) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the commission may be served on any affected person personally or by publication, and proof of that service may be made in the same manner as in case of service of a summons in a civil action. The proof of service shall be filed in the office of the commission. Service may also be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at the person's last known post office address as shown by the files or records of the commission. Proof of service may be made by the affidavit of the person who did the mailing and shall be filed in the office of the commission.

(4) Any person who participated as a party in the formal hearing may appeal a decision of the commission under this section as provided in Section 49-17-41.

SOURCES: Laws, 1977, ch. 476, § 19; Laws, 1979, ch. 477, § 52; Laws, 2002, ch. 492, § 30, eff from and after July 1, 2002.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

CJS. 58 C.J.S., Mines and Minerals § 282.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-67. Release of bond; contents of application; inspection and evaluation of reclamation work; schedule for release; procedure on disapproval of release.

(1) Upon completion of the operation in the permit area, the operator may file an application with the Permit Board for the release of the performance bond or deposit. The application for performance bond release shall require a description of the results achieved in accordance with the operator's reclamation plan, which includes revegetation and end result plans, and any other information the Permit Board may require in accordance with this chapter. The Permit Board shall file a copy of the performance bond release application for public inspection with the chancery clerk of the county where the majority of the surface mining operation is located and with the local soil and water conservation district. The Permit Board shall give notice of the pending bond release application by publication in the form as the commission by regulation may require after inspecting and evaluating the reclamation work as provided by subsection (2) of this section.

(2) After receipt of the application for bond release, the department shall, and the local soil and water district commissioners may, within thirty (30) days, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other things, the occurrence of pollution of surface and subsurface water, the probability of continuance or future occurrence of pollution, and the estimated cost of abating the pollution. Results of the evaluation and findings of the department or the soil and water commissioners, or both, shall be provided within thirty (30) days after the inspection to the operator and other interested parties making written request for the evaluation and findings. The evaluation and findings of the soil and water commissioners, if any shall be forwarded to the department before the end of the thirty (30) days.

(3) The Permit Board may release in whole or in part the performance bond or deposit if it is satisfied that reclamation covered by the performance bond or deposit or portion thereof has been accomplished as required by this chapter according to the following schedule:

(a) When the operator or surety completes required backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the Permit Board may release up to ninety percent (90%) of the performance bond or deposit for the applicable permit area. The amount of the unreleased portion of the performance bond or deposit shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of default by the operator; and

(b) When the operator has successfully completed the remaining reclamation activities, but not before two (2) years beyond the date of the initial performance bond release, the Permit Board may release the remaining portion of the performance bond or deposit. No performance bond or deposit shall be fully released until all reclamation requirements of this chapter are fully met.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Permit Board may release one hundred percent (100%) of the performance bond or deposit to private contractors surface mining on areas provided to them by the United States Army Corps of Engineers. The Permit Board may release the performance bond or deposit only if the contractors have completed the reclamation work required in paragraph (a) of this subsection and the Corps of Engineers furnishes written assurance to the Permit Board that it accepts responsibility for restoration of the mined areas in accordance with all applicable reclamation standards of this chapter.

(4) If the Permit Board denies the application for release of the performance bond or deposit or portion thereof, it shall notify the operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(5) The Permit Board shall authorize the executive director under those conditions the Permit Board may prescribe to administratively release any performance bond or deposit provided by an operator for coverage under a general permit issued under Section 53-7-23. A decision of the executive director is a decision of the Permit Board and shall be subject to review and appeal as provided in Section 49-17-29.

SOURCES: Laws, 1977, ch. 476, § 20; Laws, 1979, ch. 477, § 53; Laws, 1980, ch. 401; Laws, 2002, ch. 492, § 31, eff from and after July 1, 2002.

Cross References — Applicability of this section to the revegetation requirements of the reclamation plan, see § 53-7-35.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-69. Surface Mining and Reclamation Fund.

(1) There is created in the State Treasury a fund to be designated as the "Surface Mining and Reclamation Fund," referred to hereinafter as the "fund." There is created in the fund an account designated as the "Land Reclamation Account" and an account designated as the "Surface Mining Program Operations Account."

(2) The fund shall be treated as a special trust fund. Interest earned on the principal therein shall be credited by the Treasurer to the fund.

(3) The fund may receive monies from any available public or private sources, including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions, penalties and forfeited performance bonds. Any monies received from penalties, forfeited performance bonds, judicial actions and the interest thereon, less enforcement and collection costs, shall be credited to the Land Reclamation Account. Any monies received from the collection of fees, grants, taxes, public or private donations

and the interest thereon shall be credited to the Surface Mining Program Operations Account.

(4) The commission shall expend or utilize monies in the fund by an annual appropriation by the Legislature as provided herein. Monies in the Land Reclamation Account may be used to defray any costs of reclamation of land affected by mining operations. Monies in the Surface Mining Program Operations Account may be used to defray the reasonable direct and indirect costs associated with the administration and enforcement of this chapter.

(5) Proceeds from the forfeiture of performance bonds or deposits and penalties recovered shall be available to be expended to reclaim, in accordance with this chapter, lands with respect to which the performance bonds or deposits were provided and penalties assessed. If the commission expends monies from the fund for which the cost of reclamation exceeded the proceeds from the forfeiture of performance bonds or deposits, the commission may seek to recover any monies expended from the fund from any responsible party.

SOURCES: Laws, 1977, ch. 476, § 21(1, 2); Laws, 2002, ch. 492, § 32, eff from and after July 1, 2002.

Cross References — Definitions relating to surface mining and reclamation of land, see § 53-7-5.

Reclamation of standards and methods; alternative methods; concurrent reclamation; continuing right of entry; action on bond, see § 53-7-35.

Funds received under surface coal mining and reclamation law being credited to surface coal mining and reclamation fund, see § 53-9-89.

§ 53-7-71. Reclamation work; utilizing services of governmental agencies and private contractors; competitive bidding; right of access.

In the reclamation of land affected by surface mining for which it has funds available, the commission may avail itself of any services which may be provided by other state agencies, political subdivisions or the federal government, and may compensate them for the services. The commission may cause the reclamation work to be done through contract with other governmental agencies or with qualified persons. The contracts shall be awarded as provided by state law and policies of the commission. Any person under contract to the commission may enter onto the land affected to carry out the reclamation.

SOURCES: Laws, 1977, ch. 476, § 21(3); Laws, 2002, ch. 492, § 33, eff from and after July 1, 2002.

§ 53-7-73. Repealed.

Repealed by Laws, 2002, ch. 492, § 38, eff from and after July 1, 2002. [Laws, 1977, ch. 476, § 22, eff from and after April 15, 1978.]

Editor's Note — Former § 53-7-73 provided a temporary suspension allowing an operator to suspend mining operations for two years and to resume operations after giving notice.

§ 53-7-75. Disclosure of confidential information; penalty; application of Trade Secrets Act.

(1) Information submitted to the department, commission, Permit Board or local soil and water conservation district pertaining to the deposits of materials, trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant and which is specifically identified as confidential, shall not be available for public examination and shall not be considered as a public record if:

(a) The applicant submits a written confidentiality claim to the commission before submission of the information; and

(b) The commission determines the confidentiality claim to be valid.

(2) The confidentiality claim shall include a generic description of the nature of the information included in the submission. The commission shall adopt rules and regulations consistent with the Mississippi Public Records Act regarding access to confidential information. Any information for which a confidentiality claim is asserted shall not be disclosed pending the outcome of any formal hearing and all appeals.

(3) Any person knowingly and willfully making unauthorized disclosures of any information determined to be confidential shall be liable for civil damages arising from the unauthorized disclosure and, upon conviction, shall be guilty of a misdemeanor and shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment.

(4) This section shall be supplemental to remedies for misappropriation of a trade secret provided in the Mississippi Uniform Trade Secrets Act, Sections 75-26-1 through 75-26-19.

SOURCES: Laws, 1977, ch. 476, § 23; Laws, 1979, ch. 477, § 54; Laws, 1990, ch. 442, § 13; Laws, 2002, ch. 492 , § 34, eff from and after July 1, 2002.

Cross References — Applicability of this section to requirement that application and notice of intent be filed for public inspection, see § 53-7-29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

ALR. Proper measure and elements of damages for misappropriation of trade secret. 11 A.L.R.4th 12.

What are "trade secrets" within § 6(f) of the Federal Trade Commission Act (15 USCS § 46(f)) not subject to publication by the Commission. 50 A.L.R. Fed. 590.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-7-77. Surface Mine Worker Safety Training Program Operations Fund.

(1)(a) There is created in the State Treasury a special fund to be designated as the Surface Mine Worker Safety Training Program Operations Fund, referred to in this section as "special fund," to be administered by the executive director. The special fund shall consist of monies as may be appropriated by the Legislature and any other monies authorized under this section.

(b) Monies in the special fund shall be utilized to pay reasonable direct and indirect costs associated with surface mine worker safety training provided by the department including, but not limited to, matching funds for federal grants to meet federal grant requirements to pay a proportional share of the total cost of the training.

(c) Expenditures may be made from the special fund upon requisition by the executive director.

(d) The special fund may receive monies from any available public or private source including, but not limited to, collection of fees, interest, grants, taxes, public and private donations, judicial actions and appropriated funds.

(e) Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the special fund shall be deposited to the credit of the special fund.

(2)(a) The commission shall set by order the fee for surface mine worker safety training, not to exceed the cost of providing the training.

(b) All monies collected under this subsection shall be deposited into the special fund.

(c) The commission may delegate to the department responsibility for the collection of fees under this subsection.

(d) Any person required to pay a fee under this subsection who disagrees with the calculation or applicability of the fee may petition the commission for a hearing in accordance with Sections 49-17-33 and 49-17-35.

(e) Fees collected under this subsection shall not supplant or reduce in any way the general fund appropriation to the department.

SOURCES: Laws, 2009, ch. 436, § 1, eff from and after July 1, 2009.

Editor's Note — Laws of 2009, ch. 436, § 2, provides:
"SECTION 2. Section 1 of this act shall be codified in Chapter 7, Title 53, Mississippi Code of 1972."

CHAPTER 9

Surface Coal Mining and Reclamation of Land

Mississippi Surface Coal Mining and Reclamation Law 53-9-1
Abandoned Mine Lands Reclamation Program 53-9-101

MISSISSIPPI SURFACE COAL MINING AND RECLAMATION LAW

Sec.
53-9-1. Short title.
53-9-3. Legislative findings and declarations.
53-9-5. Purpose.
53-9-7. Definitions.
53-9-9. Administration and enforcement of chapter.
53-9-11. Promulgation of rules and regulations; hearings; notice thereof.
53-9-13. Repealed.
53-9-15. Repealed.
53-9-17. Repealed.
53-9-19. Financial interest of persons employed under this chapter; penalty; monitoring and enforcement.
53-9-21. Surface coal mining and reclamation permit; term; extensions; use by successor in interest; termination.
53-9-23. Surface coal mining and reclamation permit-reissuance.
53-9-25. Surface coal mining and reclamation permit; application fee; contents of application; insurance coverage; blasting plan; notice of past violations.
53-9-26. Surface coal mining and reclamation permit; application cost assistance to small operators.
53-9-27. Filing of permit application with chancery court clerk; public inspection; exclusion of confidential information.
53-9-28. Surface coal mining and reclamation permit; permit fees.
53-9-29. Reclamation plan included in application; contents.
53-9-31. Surface coal mining and reclamation permit; filing, deposit, and adjustment of bond; requirement of surety; liability under bond.
53-9-32. Surface coal mining and reclamation permit; preparation of plain language summary of proposed operation and reclamation.
53-9-33. Surface coal mining and reclamation permit; requisites for approval of application for permit; schedule of notices of violation; permit to mine on prime farmland; restriction on transfer of rights; modification of permit provisions.
53-9-35. Surface coal mining and reclamation permit; revisions.
53-9-37. Advertisement of land ownership; public comment on intention to mine or objections to application for permit; informal conferences; authority of permit board to conduct hearings on own motion.
53-9-39. Disposition of application for permit; manner of notifying interested parties; hearing before review board and notification of decision; temporary relief; right to judicial appeal.
53-9-41. Coal exploration permit; application; limitation on removal; penalty for disturbing land surface.
53-9-43. Confidentiality claims; penalties.
53-9-45. Promulgation of regulations and performance standards relating to surface mining; variances.
53-9-47. Promulgation of regulations relating to surface effects of underground

coal mining; permit requirements; suspension of mining; applicability of chapter.
53-9-49. Authorized departures from performance standards; experimental practices.
53-9-51. Records, reports and equipment to be maintained by permittees; evaluation of results; specification of monitoring sites; entry and inspection by department; release of materials to public.
53-9-53. Sign at entrance of surface coal mining and reclamation operation.
53-9-55. Violation of chapter; civil penalties; public hearing; judicial review; limitations on liability.
53-9-57. Criminal penalties; violation of condition of permit or order.
53-9-59. Repealed.
53-9-61. Criminal penalties; resisting, preventing, impeding, or interfering with performance of duties.
53-9-63. Nonexclusivity of penalty provisions.
53-9-65. Release of bond; objections; hearing; bond forfeiture.
53-9-67. Civil action; costs; nonexclusivity of provisions; limitations on liability.
53-9-69. Inspection; cessation order; suspension or revocation of permit; hearing; request to attorney general to institute civil action; nonexclusivity of provisions; assessing costs and expenses.
53-9-71. Designation of lands as unsuitable for surface coal mining operations.
53-9-73. Cooperation with Secretary of Interior.
53-9-75. Application of chapter to public corporations.
53-9-77. Administrative review; appeal of decisions of the permit board.
53-9-79. Repealed.
53-9-81. Inapplicability of chapter.
53-9-83. Lease of state coal deposits.
53-9-85. Enforcement and protection of water rights.
53-9-87. Training, examination, and certification of persons responsible for blasting.
53-9-89. Surface Coal Mining and Reclamation fund; deposit of funds.
53-9-91. Repealed.

§ 53-9-1. Short title.

This chapter may be cited as the "Mississippi Surface Coal Mining and Reclamation Law."

SOURCES: Laws, 1979, ch. 477, § 1, eff from and after July 1, 1979.

Cross References — Regulation of surface mining and reclamation, generally, see § 53-7-1 et seq.

Mississippi Mineral Resources Institute, see § 57-55-9.

RESEARCH REFERENCES

ALR. Liability of mine operator for damage to surface structure by removal of support. 32 A.L.R.2d 1309.

Validity and construction of statutes regulating strip mining. 86 A.L.R.3d 27.

Am Jur. 54 Am. Jur. 2d, Mines and Minerals §§ 152, 154.

9 Am. Jur. Legal Forms 2d, Gas and Oil §§ 129:1 et seq.

CJS. 58 C.J.S., Mines and Minerals § 270.

Law Reviews. Bennett, Environmental Concerns in Bankruptcy Litigation. 10 Miss. C. L. R 5, Fall 1989.

1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-3. Legislative findings and declarations.

The Legislature finds and declares that:

(a) The State of Mississippi, instead of the federal government, should regulate surface coal mining in this state because the terrain, climate, biologic, chemical and other physical conditions of the state differ from those of other states subject to regulation of mining operations;

(b) Extraction of coal from the earth can be accomplished by various methods of mining, including surface mining;

(c) Coal mining operations presently contribute significantly to the energy requirements of the state and nation, and surface coal mining constitutes one (1) method of extraction of the resource;

(d) Many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water and other natural resources;

(e) The expansion of coal mining to meet the energy needs of the state and nation makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public;

(f) Surface mining and reclamation technology are now developed so that effective and reasonable regulation of surface coal mining operations by the state in accordance with the requirements of this chapter is an appropriate and necessary means to minimize, so far as practicable, the adverse social, economic and environmental effects of those mining operations;

(g) Surface mining and reclamation standards are essential to insure the ability of the state to improve and maintain adequate standards on coal mining operations within its borders;

(h) The impacts from unreclaimed land disturbed by surface coal mining operations impose social and economic costs on residents in nearby and adjoining areas, as well as impair environmental quality;

(i) Surface coal mining operations contribute to the economic well-being, security and general welfare of the state and nation and should be conducted in an environmentally sound manner;

(j) This chapter is necessary to prevent or mitigate adverse environmental effects of surface coal mining operations; and

(k) The provisions of the 2001 amendments to this chapter are to provide for and implement a state program for abandoned mine reclamation which complies with the provisions of Subchapter IV of the federal Surface Mining Control and Reclamation Act of 1977, 30 USCS 1231 through 1243.

SOURCES: Laws, 1979, ch. 477, § 2; Laws, 1997, ch. 306, § 4; Laws, 2001, ch. 426, § 1, eff from and after July 1, 2001.

Federal Aspects — Subchapter IV of the federal Surface Mining Control and Reclamation Act of 1977, see 30 USCS §§ 1231 through 1243.

§ 53-9-5. Purpose.

It is the purpose of this chapter:

(a) To assume for the state exclusive jurisdiction over the regulation of surface coal mining and reclamation operations within the state under Section 503 of the federal act;

(b) To develop, implement and enforce a program which, at a minimum, will achieve the purposes of the federal act and the regulations promulgated under that act;

(c) To assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances thereto are fully protected from those operations;

(d) To assure that surface coal mining operations are not conducted where reclamation as required by this chapter is not feasible;

(e) To assure that surface coal mining operations are conducted in a manner protective of the environment;

(f) To assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface coal mining operations;

(g) To assure that appropriate procedures are provided for public participation in the development, revision and enforcement of regulations, standards, reclamation plans or programs established by the state under this chapter;

(h) To assure that the coal supply essential to the energy requirements of the state and nation and to their economic and social well-being is provided, and to strike a balance between protection of the environment and agricultural productivity and the need of the state and nation for coal as an essential source of energy; and

(i) To, wherever necessary, exercise the full reach of state constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.

SOURCES: Laws, 1979, ch. 477, § 3; Laws, 1997, ch. 306, § 5, eff from and after passage (approved March 10, 1997).

Federal Aspects — Surface Mining Control and Reclamation Act of 1977, see 30 USCS § 1201 et seq.

§ 53-9-7. Definitions.

For the purposes of this chapter, the following terms shall have the meaning ascribed in this section unless the context requires otherwise:

(a) "Abandoned mine lands" means lands and waters affected by the mining or processing of coal before August 3, 1977, or affected by the mining or processing of noncoal minerals, including, but not limited to, sand, gravel, clay and soil, before August 3, 1977, and abandoned or left in either an unreclaimed or inadequately reclaimed condition, and for which there is no continuing reclamation responsibility required under state or federal law, and which continue in the present condition substantially to degrade the quality of the environment, to prevent or damage the beneficial use of land or water resources, or to endanger the health or safety of the public. Abandoned mine lands also means those lands and waters described by 30 USC 1232(g)(4), 30 USC 1233(b)(1) and 30 USC 1239.

(b) "Appeal" means an appeal to an appropriate court of the state taken from a final decision of the Permit Board or commission made after a formal hearing before that body.

(c) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated. Water impoundments may be allowed if the Permit Board determines that the impoundments are in compliance with Section 53-9-45(2)(g).

(d) "As recorded in the minutes of the Permit Board" means the date of the Permit Board meeting at which the action concerned is taken by the Permit Board.

(e) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials.

(f) "Commission" means the Mississippi Commission on Environmental Quality.

(g) "Department" means the Mississippi Department of Environmental Quality.

(h) "Executive director" means the executive director of the department.

(i) "Exploration operations" means the disturbance of the surface or subsurface before surface coal mining and reclamation operations begin for the purpose of determining the location, quantity or quality of a coal deposit, and the gathering of environmental data to establish the conditions of the area before the beginning of surface coal mining and reclamation operations.

(j) "Federal act" means the Surface Mining Control and Reclamation Act of 1977, as amended, which is codified as Section 1201 et seq. of Title 30 of the United States Code.

(k) "Formal hearing" means a hearing on the record, as recorded and transcribed by a court reporter, before the commission or Permit Board where all parties to the hearing are allowed to present witnesses, cross-examine witnesses and present evidence for inclusion into the record, as appropriate under rules promulgated by the commission or Permit Board.

(*l*) "Imminent danger to health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter, in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before that condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person subjected to the same conditions or practices giving rise to the peril would not expose himself or herself to the danger during the time necessary for abatement.

(m) "Interested party" means any person claiming an interest relating to the surface coal mining operation and who is so situated that the person may be affected by that operation, or in the matter of regulations promulgated by the commission, any person who is so situated that the person may be affected by the action.

(n) "Lignite" means consolidated lignite coal having less than eight thousand three hundred (8,300) British thermal units per pound, moist and mineral matter free.

(o) "Operator" means any person engaged in coal mining who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location.

(p) "Permit" means a permit to conduct surface coal mining and reclamation operations issued under this chapter.

(q) "Permit area" means the area of land indicated on the approved map submitted by the operator with the permit application which area of land shall be covered by the operator's performance bond.

(r) "Permit Board" means the Permit Board created under Section 49-17-28.

(s) "Person" means an individual, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization and any agency, unit or instrumentality of federal, state or local government, including any publicly owned utility or publicly owned corporation.

(t) "Prime farmland" means that farmland as defined by the United States Secretary of Agriculture on the basis of factors such as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register.

(u) "Public hearing," "informal hearing" or "public meeting" means a public forum organized by the commission, department or Permit Board for the purpose of providing information to the public regarding a surface coal mining and reclamation operation or regulations proposed by the commission and at which members of the public are allowed to make comments or ask questions or both of the commission, department or the Permit Board.

(v) "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations under this chapter.

(w) "Revision" means any change to the permit or reclamation plan that does not significantly change the effect of the mining operation on either those persons impacted by the permitted operations or on the environment, including, but not limited to, incidental boundary changes to the permit area or a departure from or change within the permit area, incidental changes in the mining method or incidental changes in the reclamation plan.

(x) "Secretary" means the Secretary of the United States Department of Interior.

(y) "State" means the State of Mississippi.

(z) "State geologist" means the head of the Office of Geology and Energy Resources of the department or a successor office.

(aa) "State reclamation program" means the Mississippi program for abandoned mine reclamation provided for in this chapter.

(bb) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of those operations.

(cc) "Surface coal mining operations" means:

(i) Activities conducted on the surface and immediate subsurface of lands in connection with a surface coal mine, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. These activities include, but are not limited to:

(A) Excavation for the purpose of obtaining coal including common methods such as contour, strip, auger, mountaintop removal, boxcut, open pit and area mining;

(B) The use of explosives and blasting, in situ distillation or retorting, leaching or other chemical or physical processing; and

(C) The cleaning, concentrating or other processing or preparation, and the loading of coal for commerce at or near the mine site.

These activities do not include exploration operations subject to Section 53-9-41.

(ii) Areas upon which the activities occur or where the activities disturb the natural land surface. These areas shall also include, but are not limited to:

(A) Any adjacent land the use of which is incidental to any activities;

(B) All lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of any activities and for haulage;

(C) All lands affected by excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface resulting from or incident to the activities.

(dd) "Unwarranted failure to comply" means the failure of a permittee to prevent or abate the occurrence of any violation of a permit, this chapter or any regulation promulgated under this chapter due to indifference, lack of diligence or lack of reasonable care.

SOURCES: Laws, 1979, ch. 477, § 4; Laws, 1997, ch. 306, § 6; Laws, 2001, ch. 426, § 2; Laws, 2008, ch. 343, § 1, eff from and after passage (approved Mar. 25, 2008.)

§ 53-9-9. Administration and enforcement of chapter.

The department is designated as the agency to administer this chapter. The commission is designated as the body to enforce this chapter, including, but not limited to, the issuance of penalty orders, promulgation of regulations regarding matters addressed in this chapter, and designation of lands unsuitable for surface coal mining. The permit board is designated as the body to issue, modify, revoke, transfer, suspend and reissue permits and to require, modify or release performance bonds under this chapter.

SOURCES: Laws, 1979, ch. 477, § 5; Laws, 1997, ch. 306, § 7, eff from and after passage (approved March 10, 1997).

Cross References — Creation of Bureau of Geology and Energy Resources, see § 49-2-7.

§ 53-9-11. Promulgation of rules and regulations; hearings; notice thereof.

(1) The commission may adopt, modify, repeal and promulgate, after due notice and hearing and in accordance with the Mississippi Administrative Procedures Law, and where not otherwise prohibited by federal or state law, may make exceptions to and grant exemptions and variances from and may enforce rules and regulations necessary or appropriate to carry out this chapter. Those rules and regulations shall be consistent with rules and regulations promulgated by the United States Secretary of the Interior under the federal act. No exceptions, exemptions or variances shall be less stringent than rules and regulations promulgated under the federal act. Any rules and regulations adopted by the commission may be more stringent than those promulgated by the United States Secretary of the Interior as long as they are not otherwise inconsistent with this chapter. A rule or regulation adopted by the commission may differ in its terms and provisions regarding particular conditions, particular mining techniques, particular areas of the state, or any other conditions that appear relevant and necessary as long as the action

taken is consistent with this chapter. Before adopting any rules and regulations under this chapter, the commission shall hold a public hearing. Notice of the date, time, place and purpose of the hearing shall be given thirty (30) days before the scheduled date of the hearing as follows:

(a) By mail:

(i) To all operators known by the commission to be actively engaged in surface coal mining operations in the state;

(ii) To persons who make written request for notification of the proposed regulations;

(iii) To the Mississippi Soil and Water Conservation Commission, and to each local soil and water conservation district;

(iv) To the Mississippi Department of Wildlife, Fisheries and Parks, the Mississippi Forestry Commission, the Mississippi Department of Archives and History, the Mississippi Department of Transportation, the Mississippi Department of Agriculture and Commerce, the Mississippi State Oil and Gas Board, the Mississippi Department of Marine Resources, and the Mississippi State Department of Health; and

(v) To any other state agency whose jurisdiction the commission feels the surface coal mining operations may affect;

(b) To other interested parties by publication of the notice once a week for three (3) consecutive weeks in one (1) newspaper having general circulation in the state.

(2) Any person may submit written comments or appear and offer oral comments at the public hearing. The commission shall consider all comments and relevant data presented at the public hearing before final adoption of rules and regulations under this chapter. The failure of any person to submit comments within a time period as established by the commission shall not preclude action by the commission.

SOURCES: Laws, 1979, ch. 477, § 6; Laws, 1997, ch. 306, § 8, eff from and after passage (approved March 10, 1997).

Cross References — Commission on Environmental Quality, generally, see § 49-2-5.

Federal Aspects — Surface Mining Control and Reclamation Act of 1977, see 30 USCS § 1201 et seq.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals §§ 152, 155.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-13. Repealed.

Repealed by Laws, 1997, ch. 306, § 43, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 7]

Editor's Note — Former § 53-9-13 created the surface mining and reclamation operations section.

§ 53-9-15. Repealed.

Repealed by Laws, 1997, ch. 306, § 44, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 8]

Editor's Note — Former § 53-9-15 created the surface mining review board.

§ 53-9-17. Repealed.

Repealed by Laws, 1997, ch. 306, § 45, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 9]

Editor's Note — Former § 53-9-17 provided for the powers and duties of the director of the office of geology and energy resources.

§ 53-9-19. Financial interest of persons employed under this chapter; penalty; monitoring and enforcement.

(1) No employee of the department performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or surface coal mining operation. Whoever knowingly violates this subsection shall, upon conviction, be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00) or by imprisonment of not more than one (1) year, or by both.

(2) The commission shall promulgate regulations to establish methods by which this section shall be monitored and enforced, including appropriate provisions for the filing by any employees and the review of statements and supplements thereto concerning any financial interest which may be affected by this section.

SOURCES: Laws, 1979, ch. 477, § 10; Laws, 1997, ch. 306, § 9, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-21. Surface coal mining and reclamation permit; term; extensions; use by successor in interest; termination.

(1) No person shall open, develop, engage in, carry out or continue on lands within the state any new or existing surface coal mining operations without a permit issued by the permit board.

(2) All permits issued under this chapter shall be issued for a term not to exceed five (5) years, unless the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation. If the application is complete for the specified longer term, the permit board may issue a permit for the longer term.

(3) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to that interest, and who is able to obtain the bond coverage of the original permittee, may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the permit board takes action on the successor's application.

(4) A permit shall be terminated if the permittee has not commenced the surface coal mining operations covered by that permit within three (3) years after the issuance of the permit. The permit board may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding the commencement of surface coal mining operations or threatening substantial economic loss to the permittee upon or after commencement, or by reason of conditions beyond the control and without the fault or negligence of the permittee. For coal mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface coal mining operations at the time construction of the synthetic fuel or generating facility is initiated.

SOURCES: Laws, 1979, ch. 477, § 11(1)-(4); Laws, 1997, ch. 306, § 10, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-23. Surface coal mining and reclamation permit-reissuance.

(1) Any permit shall have the right of successive reissuance upon expiration for the areas within the boundaries of the existing permit. The burden of proving that the permit should not be reissued shall be on opponents of reissuance or the department. The holders of the permit may apply for reissuance and after meeting the public notice requirements of Sections

53-9-37 and 53-9-39, that permit shall be reissued unless it is established by the opponents to reissuance or the department, and written findings are made by the permit board stating that:

(a) The permittee is not satisfactorily meeting the terms and conditions of the existing permit;

(b) The surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter and the regulations applicable to the existing permit;

(c) The reissuance requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

(d) The operator has not provided evidence that the performance bond, or any additional bond the permit board may require under Section 53-9-31, which is in effect for that operation, will continue in full force and effect for any period of reissuance requested in the application; or

(e) The operator has failed to provide any additional, revised or updated information required by the department or the permit board.

Before granting the reissuance of any permit, the permit board shall provide notice to the public authorities described in Section 53-9-39(1)(b).

(2) If an application for reissuance of a permit includes a proposal to extend the surface coal mining operation beyond the boundaries authorized in the existing permit, the portion of the application for reissuance of the permit which addresses any new land areas shall be subject to the requirements applicable to new applications under this chapter.

(3) Any permit reissuance shall be for a term not to exceed the period of the original permit established by this chapter. Application for permit reissuance shall be filed at least one hundred eighty (180) days before the expiration of the permit. If an application for reissuance is timely filed, the operator may continue surface coal mining operations under the existing permit until the permit board takes action on the reissuance application.

SOURCES: Laws, 1979, ch. 477, § 11(5); Laws, 1997, ch. 306, § 11, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-25. Surface coal mining and reclamation permit; application fee; contents of application; insurance coverage; blasting plan; notice of past violations.

(1) Each application for a permit shall be submitted in a manner satisfactory to the permit board and shall contain:

(a) Information about the owners of all interests in the property to be mined, the owners of record of all surface and subsurface areas adjacent to any part of the permit area, the applicant and the operator, the organization of and business of the applicant, including, but not limited to, information regarding the ownership and names and addresses of directors, partners, officers and resident agents, the previous experience and performance history of the applicant in surface coal mining; a statement of whether the applicant, subsidiary, affiliate or persons controlled by or under common control with the applicant has held a mining permit which in the five-year period before the initial filing of this application has been suspended or revoked or under which the performance bond or deposit has been forfeited; a description of the proposed mining operation, including maps or plans, the watershed into which surface and pit drainage will be discharged, significant climatological factors and soil surveys; and any other information as the permit board or commission by regulation may require consistent with the federal act.

(b) A determination of the probable hydrologic consequences of the surface coal mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems. The determination shall include, but not be limited to, an estimate of the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data from the mine site and surrounding areas so that an assessment can be made by the permit board of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until hydrologic information on the general area before mining is made available from an appropriate federal or state agency, but the permit shall not be issued until that information is available and is incorporated into the application; and

(c) A statement of the result of test borings or core samplings from the permit area. The statement shall include, but not be limited to, logs of the drill holes, the thickness of the coal seam found, an analysis of the chemical properties of the coal, the sulphur content of any coal seam, chemical analysis of potentially acid or toxic forming sections of the overburden, and a chemical analysis of the stratum lying immediately underneath the coal to be mined. This paragraph may be waived by the permit board with respect to the specific application by a written determination that the requirements are unnecessary.

(2) In addition to the information required by the permit board under subsection (1) of this section, each applicant for a permit shall submit to the permit board as part of the permit application the following:

(a) A reclamation plan which meets the requirements of this chapter and regulations promulgated under this chapter;

(b) A certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought, or in the alternative, evidence that the applicant has satisfied other state or federal self-insurance requirements. Any policy shall provide for personal injury and property damage protection in an amount determined by the permit board to be adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under applicable state law. The policy shall be maintained in full force and effect during the term of the permit and any reissuance, including the length of all reclamation operations.

(c) A blasting plan which outlines the procedures and standards by which the operator will meet the regulations promulgated under this chapter.

(3) The applicant shall file with the permit application a list showing any administrative order or notice of violation issued under this chapter, or any law of any state or the United States, or any rule or regulation of any department or agency of any state or the United States, related to air or water environmental protection incurred by the applicant in connection with any surface coal mining operation during the three-year period immediately preceding the filing date of the initial application. The list shall also indicate the final resolution of any notice of violation or administrative order. If the list or other information available to the permit board indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or any other laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the department or agency of any state or the United States which has jurisdiction over the violation. No permit shall be issued to an applicant following a finding by the permit board, after opportunity for a formal hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of any law, rule or regulation of any state or the United States, or any department or agency of any state or the United States, related to air or water environmental protection in connection with any surface coal mining operation and which is of a nature and duration with resulting irreparable damage to the environment to indicate an intent not to comply with this chapter.

SOURCES: Laws, 1979, ch. 477, § 12(1)-(5), (7), (8); Laws, 1997, ch. 306, § 12, eff from and after passage (approved March 10, 1997).

Cross References — Contents of reclamation plan to be filed with application for permit, see § 53-9-29.

Necessity of obtaining assessment of probable cumulative impact of mining on hydrologic balance before permit or revision application can be approved, see § 53-9-33.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

§ 53-9-26. Surface coal mining and reclamation permit; application cost assistance to small operators.

If the Permit Board finds that the probable total annual production at all locations of a surface coal mining operator will not exceed three hundred thousand (300,000) tons, the cost of conducting activities to obtain and provide the information required to be contained in the permit application as determined by the commission consistent with Section 507(c) of the federal act shall be assumed by the department, subject to the availability of federal or other special funds for that purpose and upon written request of the operator. All work under this section shall be performed by a qualified public or private laboratory or other public or private qualified entity designated by the department.

SOURCES: Laws, 1997, ch. 306, § 1; Laws, 1998, ch. 373, § 1, eff from and after passage (approved March 16, 1998).

§ 53-9-27. Filing of permit application with chancery court clerk; public inspection; exclusion of confidential information.

Each applicant for a permit shall file, within ten (10) days after filing with the permit board, a copy of its application for public inspection with the clerk of the chancery court of the county or judicial district where the mining is to occur and where real property contiguous to the surface coal mining and reclamation operation is located, if that property is located in more than one (1) county or judicial district. The applicant may omit from its filing information in its permit application pertaining to the quality, depth or width of the coal seam or the location of the coal seam within the permit area included in the application, if that information has been determined to be confidential by the commission under Section 53-9-43.

SOURCES: Laws, 1979, ch. 477, § 12(6); Laws, 1997, ch. 306, § 13, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

§ 53-9-28. Surface coal mining and reclamation permit; permit fees.

(1) The commission shall assess and collect a permit fee for reviewing the permit application and administering and enforcing a surface coal mining and reclamation permit. The commission may set permit fees for the transfer, modification or reissuance of a surface coal mining and reclamation permit.

(2) The commission may also establish a permit fee for the issuance, reissuance, transfer or modification of a coal exploration permit and a

reasonable fee for a copy of a transcript of a formal hearing held under this chapter.

(3) The commission shall set by order the amount of any permit fee assessed under this section. A permit fee may be less than, but shall not exceed the actual or anticipated direct and indirect costs of reviewing the permit application and administering and enforcing the permit. The commission may establish procedures to allow the assessment and collection of the permit fee over the term of the permit.

SOURCES: Laws, 1997, ch. 306, § 2, eff from and after passage (approved March 10, 1997).

§ 53-9-29. Reclamation plan included in application; contents.

The reclamation plan shall include in the degree of detail as the commission may require by regulation:

(1) An identification of lands subject to surface coal mining operations over the estimated life of those operations;

(2) Information about the condition and variety of uses of the land at the time of the application and the proposed uses of the land after reclamation;

(3) A description of how reclamation is to be achieved, including a schedule of and timetable for significant reclamation activities;

(4) An estimate of reclamation costs;

(5) The steps to be taken to comply with applicable air and water quality standards, health and safety standards and performance standards applicable to reclamation adopted under this chapter; and

(6) Any other information consistent with the federal act as the permit board or commission may require to demonstrate that the reclamation required by this chapter can be accomplished.

SOURCES: Laws, 1979, ch. 477, § 13; Laws, 1997, ch. 306, § 14, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-31. Surface coal mining and reclamation permit; filing, deposit, and adjustment of bond; requirement of surety; liability under bond.

(1) The applicant shall file with the department, in the manner and form as required by the commission, a bond for performance payable to the commission and conditional upon faithful performance of the requirements of

this chapter and the permit. The bond shall be filed before the issuance of a permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. The permit area shall be readily identifiable by appropriate marks on the site. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the permittee shall file with the department an additional bond or bonds to cover those increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the permit and shall reflect the probable difficulty of reclamation, giving consideration to factors such as topography, geology of the site, hydrology and revegetation potential. The amount of the bond shall be determined by the permit board after consultation with the state geologist. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the department in the event of forfeiture, and in no case shall the bond for the entire area under one (1) permit be less than Ten Thousand Dollars ($10,000.00).

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period which coincides with the operator's responsibility for revegetation requirements in regulations promulgated under Section 53-9-45. The bond shall be executed by the operator and a corporate surety licensed to do business in this state. The operator may elect to deposit the following in lieu of the surety bond: cash, negotiable bonds of the United States government or the state, or negotiable certificates of deposit or a letter of credit of any bank organized or transacting business in the state and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or a similar federal banking or savings and loan insurance organization. The cash deposit or market value of the securities shall be equal to or greater than the amount of the bond required for the bonded area.

(3) In accordance with any conditions established by the commission in regulations promulgated under this chapter, the permit board may accept the bond of the applicant itself without separate surety if the applicant demonstrates to the satisfaction of the permit board the existence of a suitable agent to receive service of process, a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond that amount.

(4) Cash, negotiable bonds, negotiable certificates of deposit, letters of credit or securities deposited as provided in subsection (2) of this section shall be deposited on the same terms upon which surety bonds may be deposited.

(5) The amount of the financial assurance required and the terms of each acceptance of the applicant's financial assurance shall be adjusted by the permit board from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

SOURCES: Laws, 1979, ch. 477, § 14; Laws, 1997, ch. 306, § 15, eff from and after passage (approved March 10, 1997).

Cross References — Effect of evidence that bond will continue upon burden of proving operator is entitled to renewal of mining and reclamation permit, see § 53-9-23.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-32. Surface coal mining and reclamation permit; preparation of plain language summary of proposed operation and reclamation.

Upon receipt of a complete application for a surface coal mining and reclamation operation, the state geologist shall prepare a brief written summary of the proposed operation and reclamation. This summary shall be written in language understandable to the general public and shall be made available to the public at the department and at each location where the applicant is required to place a copy of the application for public inspection.

SOURCES: Laws, 1997, ch. 306, § 3, eff from and after passage (approved March 1997).

§ 53-9-33. Surface coal mining and reclamation permit; requisites for approval of application for permit; schedule of notices of violation; permit to mine on prime farmland; restriction on transfer of rights; modification of permit provisions.

(1) Upon the basis of a complete application for permit or a complete application for modification or reissuance of a permit, including public notification and an opportunity for public hearing as required by Section 53-9-37, the permit board shall issue, deny or modify the permit within the time required under Section 53-9-37 and shall notify the applicant in writing of its action within the time required under Section 53-9-39. The applicant for a permit or modification of a permit shall have the burden of establishing that its complete application is in compliance with the requirements of this chapter and regulations promulgated under this chapter. The action of the permit board shall be effective upon the initial decision by the permit board as recorded in the minutes of the permit board.

(2) No permit or modification shall be issued or granted unless the application affirmatively demonstrates, and the permit board finds in writing on the basis of the information set forth in the application or from information otherwise available which shall be documented in the written findings of the permit board and made available to the applicant, that:

(a) The permit application is accurate and complete, and the applicant and application have complied with all requirements of this chapter and the regulations promulgated under this chapter;

(b) The applicant has demonstrated that reclamation as required by this chapter and the regulations promulgated under this chapter can be accomplished under the reclamation plan contained in the permit application;

(c) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance as specified in Section 53-9-25, has been made by the state geologist and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

(d) The area proposed to be mined is not included within an area designated unsuitable for surface coal mining under Section 53-9-71, or is not within an area that is the subject of an administrative proceeding for that designation commenced under Section 53-9-71; and

(e) If the private coal estate has been severed from the private surface estate, the applicant shall have submitted to the permit board:

(i) The written consent of the surface owners to the extraction of coal by surface mining methods; or

(ii) A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

Any determination made by the permit board under paragraph (e) of this subsection shall not be construed as an adjudication of property rights.

(3) If the area proposed to be mined contains prime farmland the permit board shall issue a permit to mine on prime farmland if the permit board finds in writing that the operator has satisfied the requirements of subsection (2) of this section and has the technological capability to restore the mined area within a reasonable time to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards in the regulations promulgated under Section 53-9-45.

(4) No transfer, assignment or sale of the rights granted under any permit issued under this chapter shall be made without approval of the permit board.

(5) The permit board shall, within a period of time established in regulations promulgated by the commission, review outstanding permits and may require reasonable modification of the permit provisions during the term of that permit. Any modification shall be based upon a written finding and subject to notice and hearing requirements established by this chapter and regulations promulgated under this chapter.

SOURCES: Laws, 1979, ch. 477, §§ 15(2)-15(4); Laws, 1997, ch. 306, § 16, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-35. Surface coal mining and reclamation permit; revisions.

(1) During the term of the permit, the permittee may submit an application for a revision of the permit and a revised reclamation plan, to the department in accordance with regulations promulgated by the commission.

(2) An application for a revision of a permit shall not be approved unless the executive director finds that reclamation as required by this chapter and the regulations promulgated under this chapter can be accomplished under the revised reclamation plan. The revision shall be granted or denied by the executive director within a period of time established in the regulations promulgated by the commission. The commission shall also promulgate regulations for determination of the extent to which a revision application shall comply with this chapter, including notice and hearing requirements. A decision by the executive director to grant or deny a revision of a permit shall be subject to formal hearing and appeal as would an initial decision of the permit board under Section 49-17-29.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for a new permit. A revision shall not be considered a modification.

SOURCES: Laws, 1979, ch. 477, § 16; Laws, 1997, ch. 306, § 17, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-37. Advertisement of land ownership; public comment on intention to mine or objections to application for permit; informal conferences; authority of permit board to conduct hearings on own motion.

(1) Upon submission of a complete application for a permit or modification of an existing permit, under this chapter and the regulations promulgated under this chapter, the applicant shall submit to the permit board a copy of the applicant's advertisement of the ownership, precise location and boundaries of the land to be affected. At the time of submission, the applicant shall place the advertisement for publication at least once a week for four (4) consecutive

weeks in a local newspaper and in a regional newspaper of general circulation in the county in which the proposed surface coal mine is to be located. If no local newspaper of general circulation in the county is published, notice shall be published once a week for four (4) consecutive weeks in a regional newspaper of general circulation in the county in which the proposed surface coal mine is to be located and in a newspaper of general statewide circulation published in Jackson. The permit board shall notify local governmental bodies, planning agencies, sewage and water treatment authorities, or water companies in the county in which the proposed surface coal mining will take place of the submission of the complete permit application. The permit board shall notify them of the operator's intention to surface mine coal on a particularly described tract of land, the number of the permit application and where a copy and summary of the proposed surface coal mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the commission on the effect of the proposed operation on the environment which is within their area of responsibility. The comments shall be transmitted as soon as possible to the applicant by the permit board and shall be made available to the public at the same locations as the surface coal mining and reclamation permit application. The failure of any person to submit comments within the time established by the commission shall not preclude action by the commission.

(2)(a) Any interested party or the officer or head of any federal, state or local governmental agency or authority, may file written objections to the complete application for a surface coal mining and reclamation permit, or modification of an existing permit, with the permit board within thirty (30) days after the last publication of the notice described in subsection (1) of this section. Any objections shall be transmitted as soon as possible to the applicant by the permit board and shall be made available to the public.

(b) Within forty-five (45) days after the last publication of the notice described in subsection (1) of this section, any interested party may request that the permit board conduct a public hearing concerning the complete application. If a public hearing is requested, the permit board shall hold a public hearing in the county of the proposed surface coal mining and reclamation operations within ninety (90) days after receipt of the first request for a public hearing. Before issuance of a permit, the permit board shall hold a public hearing at a suitable location in the county of the proposed surface coal mining and reclamation operation. The date, time and location of any public hearing shall be advertised by the permit board in the same manner as provided for the publication of notice for advertisement of land ownership under subsection (1) of this section. The last public hearing notice shall be published at least thirty (30) days before the scheduled public hearing date. An electronic or stenographic record shall be made of the public hearing proceeding. Any person requesting transcription of the record shall bear the costs of that transcription. That record shall be maintained and shall be accessible to the public until final release of the applicant's performance bond or other collateral. If all persons requesting the public hearing stipulate agreement before the requested public hearing and withdraw their request, the public hearing may be cancelled at the discretion of the permit board.

(3) The permit board shall arrange with the applicant, upon request by any interested party requesting a public hearing, reasonable access to the area of the proposed surface coal mining and reclamation operation for the purpose of gathering information relevant to the proceeding before the public hearing. If that request is made less than one (1) week before the scheduled date of the public hearing, access may not be provided before the public hearing.

(4) The permit board shall act upon a complete permit application within sixty (60) days after the date of the public hearing. If no public hearing is requested or required, the permit board shall act within sixty (60) days after the last publication of the notice described in subsection (1) of this section. The time frames may be extended if agreed in writing by the department and the applicant.

(5) Nothing in this section shall be construed to prevent the permit board on its own motion from conducting public hearings to obtain information from the public regarding the proposed surface coal mining operations.

SOURCES: Laws, 1979, ch. 477, § 18; Laws, 1997, ch. 306, § 18, eff from and after passage (approved March 10, 1997).

Cross References — Importance of fulfilling notice requirements before renewal of permit can be obtained, see § 53-9-23.

Furnishing of written findings to parties involved in formal hearing under this section, see § 53-9-39.

Notification to applicant for permit that application has been approved or disapproved when no informal conference has been held, see § 53-9-39.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-39. Disposition of application for permit; manner of notifying interested parties; hearing before review board and notification of decision; temporary relief; right to judicial appeal.

(1) Within fourteen (14) days after issuing or denying a permit or granting or denying a modification to an existing permit, as recorded in the minutes of the permit board, the permit board shall notify by mail to the last-known address, the following:

(a) The permit applicant;

(b) The mayor of each municipality and the president of the board of supervisors of each county in which the permit area is located;

(c) Persons who submitted written comments concerning the application in the time, manner and form as provided by regulation, if those persons provided the permit board with a complete address; and

(d) Persons who requested the public hearing, if a public hearing was held, if those persons provided the permit board with a complete address.

The notification required under paragraph (b) of this subsection shall include a description of the permit area and a summary of the mining and reclamation plan.

(2) If the permit board denies the permit, the permit board shall provide the applicant in writing specific reasons for its denial.

(3) Within forty-five (45) days after the action of the permit board, as recorded in the minutes of the permit board, the applicant or any other interested party may request a formal hearing. If the permit board fails to take action within the time allowed under Section 53-9-37, any interested party may request a formal hearing on that failure to act. Any formal hearing shall be conducted within sixty (60) days after receipt of the first request for a formal hearing. No person who presided at a public hearing on an application for the same surface coal mining and reclamation operation under Section 53-9-37 shall preside at the formal hearing. At the conclusion of the formal hearing or within thirty (30) days after the formal hearing, the permit board shall enter in its minutes a final decision affirming, modifying or reversing its prior decision to issue or deny the permit. The permit board shall mail within seven (7) days after its final decision as recorded in the minutes of the permit board, notice of that decision to the applicant and all persons who participated as a party in the formal hearing. The deadlines in this subsection may be extended by written agreement of the parties.

(4) If a hearing is requested under subsection (3) of this section, the permit board may, under any conditions as it may prescribe, grant temporary relief as it deems appropriate pending a final action if:

(a) All proper parties to the formal hearing have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting that relief shows that there is substantial likelihood that the person will prevail on the merits of the final action; and

(c) Any relief shall not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

(5) A verbatim record of each formal hearing held under this chapter shall be made.

(6) Any applicant or any person who participated as a party in the formal hearing and who is aggrieved by the final action of the permit board may appeal that action in accordance with Section 49-17-29.

SOURCES: Laws, 1979, ch. 477, §§ 15(1) and 19; Laws, 1997, ch. 306, § 19, eff from and after passage (approved March 10, 1997).

Cross References — Importance of fulfilling notice requirements before renewal of permit can be obtained, see § 53-9-23.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-41. Coal exploration permit; application; limitation on removal; penalty for disturbing land surface.

(1) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with the regulations promulgated by the commission governing those operations. The regulations shall require any person planning to conduct exploration operations to obtain an exploration permit from the permit board before conducting those operations. The permit application shall require the applicant to give a description of the exploration area and the period of proposed exploration, provisions for reclamation in accordance with the performance standards in the regulations promulgated under Section 53-9-45 of all lands disturbed in exploration, including excavations, roads, drill holes and the removal of necessary facilities and equipment, and any other information as the permit board or commission may require.

(2) Any person who conducts any coal exploration activities which substantially disturb the natural land surface in violation of this section or regulations promulgated under this chapter shall be subject to Sections 53-9-55 through 53-9-57 and Section 53-9-63.

(3) No operator shall remove more than two hundred fifty (250) tons of coal under an exploration permit without the specific written approval of the permit board.

SOURCES: Laws, 1979, ch. 477, § 17; Laws, 1990, ch. 442, § 14; Laws, 1997, ch. 306, § 20, eff from and after passage (approved March 10, 1997).

Cross References — Exclusion of exploration operations under this provision from surface coal mining operations as defined for this chapter, see § 53-9-7.

Procedure to be followed upon disposition of application for permit, see § 53-9-39.

RESEARCH REFERENCES

ALR. Proper measure and elements of damages for misappropriation of trade secret. 11 A.L.R.4th 12.

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-43. Confidentiality claims; penalties.

(1) Information submitted to the department, commission or permit board concerning trade secrets or privileged commercial or financial information relating to the competitive rights of an applicant and which is specifically

identified as confidential, shall not be available for public examination and shall not be considered as a public record if:

(a) The applicant submits a written confidentiality claim to the commission before the submission of the information; and

(b) The commission determines the confidentiality claim to be valid.

(2) The confidentiality claim shall include a generic description of the nature of the information included in the submission. The commission shall promulgate rules and regulations consistent with the Mississippi Public Records Act regarding access to confidential information. Any information for which a confidentiality claim is asserted shall not be disclosed pending the outcome of any formal hearing and all appeals.

(3) Any person knowingly and willfully making unauthorized disclosures of any information determined to be confidential shall be liable for civil damages arising from the unauthorized disclosure and, upon conviction, shall be guilty of a misdemeanor and shall be fined a sum not to exceed One Thousand Dollars ($1,000.00) and dismissed from public office or employment. This section is supplemental to remedies for misappropriation of a trade secret provided in the Mississippi Uniform Trade Secrets Act.

SOURCES: Laws, 1979, ch. 477, § 20(1); Laws, 1997, ch. 306, § 21, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

§ 53-9-45. Promulgation of regulations and performance standards relating to surface mining; variances.

(1) Any permit issued under this chapter to conduct surface coal mining and reclamation operations or coal exploration operations shall require that those surface coal mining and reclamation operations or coal exploration operations meet all applicable performance standards of this chapter and any other requirements the commission shall promulgate.

(2) The commission shall promulgate regulations establishing general environmental protection performance standards which shall be applicable to all surface coal mining and reclamation operations in the state. Those regulations shall:

(a) Assure that the surface coal mining operations are conducted so as to maximize the utilization and conservation of the coal being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(b) Assure that the uses the affected land is capable of supporting after restoration are equivalent to or higher and better than the uses that existed before mining;

(c) Assure restoration of the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated, unless an exception is provided under this section;

(d) Assure surface area stabilization;

(e) Assure preservation and restoration of topsoil or other strata which is better able to support vegetation;

(f) Provide for removal, storage, replacement and reconstruction of soils on prime farmlands;

(g) Assure water drainage and silt control for all the affected areas to strictly control soil erosion, damage to adjacent lands and pollution of streams and other waters, both during and following the mining operations. Before, during and for a reasonable period after mining, all drainways for the affected area shall be protected with silt traps, dams, or other structures or devices of approved design as directed by the regulations. The operator may elect to impound water to provide lakes or ponds of approved design for wildlife, recreational or water supply purposes, if it is a part of the approved mining and reclamation plan, and if those impoundments are constructed in accordance with applicable federal and state laws and regulations;

(h) Govern the proper conduct of augering operations or prohibit those operations under certain circumstances;

(i) Provide for the minimization of disturbances to the prevailing hydrologic balance and to the quality and quantity of water in ground water and surface water systems using the best technology currently available;

(j) Govern the management and surface disposal of mine wastes;

(k) Govern the circumstances under which surface coal mining and reclamation operations may be conducted near active or abandoned underground mines;

(*l*) Govern the use of mine waste piles as dams or embankments;

(m) Govern the management and disposal of debris and hazardous or toxic materials;

(n) Govern the use of explosives;

(o) Assure contemporaneous reclamation in an environmentally sound manner;

(p) Govern access roads;

(q) Govern revegetation;

(r) Govern the duration of responsibility for revegetation with a minimum period of responsibility of not less than five (5) years;

(s) Assure protection of offsite areas;

(t) Govern the management and disposal of excess spoil material;

(u) Assure the minimization of disturbances and adverse impacts on fish, wildlife and related environmental values using the best technology currently available;

(v) Provide for barriers to slides and erosion; and

(w) Provide for any other criteria deemed necessary by the commission to achieve reclamation in accordance with the purposes of this chapter and the federal act.

(3) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by the regulations promulgated under this section. This subsection shall not apply to surface coal mining and reclamation operations on flat or gently rolling terrain or on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area. The performance standards promulgated under this subsection shall:

(a) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material or waste mineral matter is placed on the downslope below the bench or mining cut, unless that spoil material in excess of that required for the reconstruction of the approximate original contour under the regulations promulgated under subsection (2) of this section or under paragraph (b) of this subsection is permanently stored in accordance with the regulations promulgated under subsection (2) of this section;

(b) Require complete backfilling with spoil material to cover completely the highwall and return the site to the approximate original contour. The material shall maintain stability following mining and reclamation;

(c) Provide that the operator may not disturb land above the top of the highwall unless the permit board finds that the disturbance will facilitate compliance with the general environmental protection standards promulgated under this section, but the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance.

For the purposes of this subsection, the term "steep slope" means any slope above twenty (20) degrees or any lesser slope defined by the commission after consideration of soil, climate and other characteristics of the region of the state.

(4)(a) The commission may grant variances for the purposes set forth in paragraphs (b)(i), (ii) and (iii) of this subsection, if the watershed control of the area is improved, and complete backfilling with spoil material is required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(b) If an applicant meets the requirements of subparagraphs (i), (ii) and (iii) of this paragraph and paragraph (c) of this subsection, a variance from the requirement to restore to approximate original contour set forth in subsection (3) of this section may be granted for the surface mining of coal if the owner of the surface rights knowingly requests in writing, as a part of the permit application, that the variance be granted to render the land, after reclamation, suitable for an industrial, commercial, residential or public use, including recreational facilities, in accordance with paragraph (c) of this subsection and if:

(i) After notification of appropriate federal, state and local governmental agencies providing an opportunity to comment on the proposed use and consultation with appropriate land use planning agencies, if any, the proposed postmining use of the affected land is deemed by the permit board to constitute an equal or better economic or public use of the land as compared with the premining use;

(ii) The proposed postmining land use is compatible with adjacent land uses and state and local land use planning, economically practical for the proposed use and designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage and configuration necessary for the intended use of the site; and

(iii) After approval of the appropriate state environmental agencies, the watershed of the affected land is deemed to be improved.

(c) In granting a variance under this subsection, the commission shall require that only the necessary amount of spoil will be placed off the mine bench to achieve the planned postmining land use, insure stability of the spoil retained on the bench, and meet all other requirements of this chapter. All spoil placement off the mine bench must comply with the regulations promulgated under subsection (2) of this section.

(d) The commission shall promulgate specific regulations to govern the granting of variances in accord with this subsection, and may impose any additional requirements it deems necessary.

(e) All variances granted under this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and the mining and reclamation plan.

SOURCES: Laws, 1979, ch. 477, § 20(2)-(4); Laws, 1997, ch. 306, § 22; Laws, 1998, ch. 373, § 2, eff from and after passage (approved March 16, 1998).

Cross References — Use of standards in forming blasting plan to be submitted with reclamation permit application, see § 53-9-25.

Correlation between liability under bond of performance and operator's responsibility for revegetation requirements, see § 53-9-31.

Effect of soil reconstruction standards upon determination that prime farmland may be mined, see § 53-9-33.

Authorized departures from performance standards, see §§ 53-9-49.

RESEARCH REFERENCES

Am Jur. 1 Am. Jur. Pl & Pr Forms (Rev), Adjoining Landowners, Form 4.1 (complaint, petition, or declaration-allegation-relative situation of parties); Form 4.2 (complaint, petition, or declaration-allegation-Interest of plaintiff); Form 4.3 (complaint, petition, or declaration-allegation-duty of defendant); Form 4.4 (complaint, petition, or declaration-allegation-Breach of duty by defendant); Form 20.1 (complaint, petition, or declaration-allegation-negligence in excavation).

§ 53-9-47. Promulgation of regulations relating to surface effects of underground coal mining; permit requirements; suspension of mining; applicability of chapter.

(1) The commission may promulgate regulations regarding the surface effects of underground coal mining operations establishing the following requirements. In promulgating any regulations, the commission shall consider the distinct difference between surface coal mining and underground coal mining. The regulations shall not conflict with the Federal Coal Mine Health and Safety Act of 1969, as amended or any regulation issued under that law.

(2) Each permit issued under this chapter and relating to underground coal mining shall require the operator to:

(a) Adopt measures consistent with known technology to prevent subsidence causing material damage to the extent technologically and economically feasible to maximize mine stability, and maintain the value and reasonably foreseeable use of any surface lands, except in instances where the mining technology used requires planned subsidence in a predictable and controlled manner. Nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining;

(b) Seal all portals, entryways, drifts, shafts or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

(c) Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible the return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations;

(d) Stabilize all waste piles containing mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations created by the permittee from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary;

(e) Assure that the leachate will not degrade surface or ground waters below water quality standards established under applicable federal and state law;

(f) Assure that the final contour of the waste accumulation will be compatible with natural surroundings;

(g) Assure that the site is stabilized and revegetated according to this chapter;

(h) Design, locate, construct, operate, maintain, enlarge, modify, and remove, or abandon, in accordance with the standards and criteria developed by the commission, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(i) Establish on regraded areas, and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area;

(j) Protect offsite areas from damages which may result from the mining operations;

(k) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(*l*) Minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:

(i) Taking measures to avoid acid or other toxic mine drainage including, but not limited to:

(A) Preventing or removing water from contact with toxic producing deposits;

(B) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses;

(C) Casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and

(ii) Conducting surface coal mining operations to prevent, to the extent possible using the best technology currently available, additional levels of suspended solids to streamflow or runoff outside the permit area, but in no event shall those levels be in excess of requirements set by applicable state or federal law or regulations, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(m) Operate in accordance with the general environmental protection standards promulgated under Section 53-9-45 for any effects which result from surface coal mining operations including surface impacts from the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to the activities. The commission shall make necessary modifications in the requirements imposed by this paragraph to accommodate the distinct difference between surface and underground coal mining;

(n) Minimize disturbances and adverse impacts of the operation to the extent possible, using the best technology currently available, on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable; and

(o) Locate openings for all new drift mines working acid-producing or iron-producing coal seams to prevent a gravity discharge of water from the mine.

(3) To protect the stability of the land, the permit board shall suspend underground coal mining under urbanized areas, cities, towns and communi-

ties, and under areas adjacent to industrial or commercial buildings, major impoundments or permanent streams if the permit board finds imminent danger to inhabitants of the urbanized areas, cities, towns and communities.

(4) The provisions of this chapter relating to permits, bonds, inspections and enforcement, public notice and hearing and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with any modifications to the permit application requirements, permit issuance or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining.

SOURCES: Laws, 1979, ch. 477, § 21; Laws, 1997, ch. 306, § 23, eff from and after passage (approved March 10, 1997).

Cross References — Authorized departures from performance standards, see § 53-9-49.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-49. Authorized departures from performance standards; experimental practices.

To encourage advances in mining and reclamation practices or to allow postmining land use for industrial, commercial, residential or public use, including recreational facilities, the commission, with the approval of the United States Secretary of the Interior or the secretary's designee, may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under Sections 53-9-45 and 53-9-47. Those departures may be authorized if:

(a) The experimental practices are at least as environmentally protective during and after mining operations as those required by promulgated standards;

(b) The mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(c) The experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

SOURCES: Laws, 1979, ch. 477, § 37; Laws, 1997, ch. 306, § 24, eff from and after passage (approved March 10, 1997).

§ 53-9-51. Records, reports and equipment to be maintained by permittees; evaluation of results; specification of monitoring sites; entry and inspection by department; release of materials to public.

(1) For purposes of administering and enforcing any permit under this chapter, adequately developing a regulatory program, or determining whether any person is in violation of this chapter:

(a) The commission shall require any permittee to:

(i) Establish and maintain appropriate records;

(ii) Make monthly reports to the department;

(iii) Install, use and maintain any necessary monitoring equipment or methods;

(iv) Evaluate results in accordance with the methods, at locations and intervals and in any manner as the commission shall prescribe; and

(v) Provide any other information relative to surface coal mining and reclamation operations as the commission deems reasonable and necessary.

(b) For those surface coal mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the permit board shall specify those (i) monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (ii) monitoring sites to record level, amount and samples of groundwater and aquifers potentially affected by the mining and also directly below the lowermost (deepest) coal seam to be mined; (iii) records of well logs and borehole data to be maintained; and (iv) monitoring sites to record precipitation.

The monitoring, data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the commission in order to assure their reliability and validity; and

(c) Any authorized representative of the department without advance notice and upon presentation of appropriate credentials (i) shall have the right of entry to, upon or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained under paragraph (a) of this subsection are located, and (ii) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operations required under this chapter.

(2) The inspections by the authorized representative of the department shall:

(a) Occur on an irregular basis averaging not less than one (1) partial inspection per month and one (1) complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(b) Occur without prior notice to the permittee or the permittee's agents or employees except for necessary on-site meetings with the permittee; and

(c) Include the filing of inspection reports adequate to enforce the requirements of this chapter.

(3) Each inspector, upon detection of each violation of any requirement of this chapter, shall immediately inform the operator in writing and shall report in writing that violation to the department.

(4) Copies of any records, reports, inspection materials or information obtained under this section by the department shall be made available as soon as possible to the public at central and sufficient locations in the county of the area of mining so that they are conveniently available to residents in the areas of mining and shall be considered public records.

SOURCES: Laws, 1979, ch. 477, §§ 22(1)-22(2), 22(4)-22(5); Laws, 1997, ch. 306, § 25, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-53. Sign at entrance of surface coal mining and reclamation operation.

Each permittee shall conspicuously maintain at the entrance to the surface coal mining and reclamation operation a clearly visible sign which sets forth the name, business address and phone number of the permittee and the permit number of the surface coal mining and reclamation operations. The sign shall also state that questions and complaints regarding the surface coal mining and reclamation operations may be directed to the department and shall provide the department's telephone number.

SOURCES: Laws, 1979, ch. 477, § 22(3); Laws, 1997, ch. 306, § 26, eff from and after passage (approved March 10, 1997).

§ 53-9-55. Violation of chapter; civil penalties; public hearing; judicial review; limitations on liability.

(1)(a) When the commission or an authorized representative of the department has reason to believe that a violation of this chapter or any regulation or order of the commission or permit board or any condition of a permit has occurred, the commission may cause a written complaint to be served upon the alleged violator. The complaint shall specify the section, regulation, order or permit alleged to be violated and the facts alleged to constitute the violation and shall require the alleged violator to appear before the commission at a time and place specified in the order to answer the complaint. The time of appearance before the commission shall be not less than twenty (20) days from the date of the mailing or service of the complaint, whichever is earlier.

(b) The commission shall afford an opportunity for a formal hearing to the alleged violator at the time and place specified in the complaint or at another time or place agreed to in writing by both the department and the alleged violator, and approved by the commission. On the basis of the evidence produced at the formal hearing, the commission shall enter an order which in its opinion will best further the purposes of this chapter and shall give written notice of that order to the alleged violator and to any other persons who participated as parties at the formal hearing or who made written request for notice of the order. The commission may assess penalties as provided in this section.

(c) Except as otherwise expressly provided, any notice or other instrument issued by or under authority of the commission may be served on any affected person personally or by publication, and proof of that service may be made in the same manner as in case of service of a summons in a civil action. The proof of service shall be filed in the office of the commission. Service may also be made by mailing a copy of the notice, order, or other instrument by certified mail, directed to the person affected at the person's last known post-office address as shown by the files or records of the commission. Proof of service may be made by the affidavit of the person who did the mailing and shall be filed in the office of the commission.

(2) When the commission determines that any person has violated this chapter or any regulation promulgated under this chapter, order of the commission issued under this chapter or condition or limitation of a permit issued under this chapter, the commission, after notice and opportunity for a formal hearing as provided in this section, unless expressly waived by the violator, may assess that person a civil penalty not to exceed Twenty-Five Thousand Dollars ($25,000.00) per violation. Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessments. If a cessation order is issued under Section 53-9-69, the commission shall assess a civil penalty under this section. In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation; and other factors set forth in Section 49-17-43.

(3) Upon the issuance of an order finding that a violation of this chapter has occurred, the person found to be in violation shall have thirty (30) days to pay the proposed penalty in full or, if the person wishes to appeal either the amount of the penalty or the fact of the violation or both forward the proposed amount as a penalty payment bond to the executive director for placement in an escrow account. The executive director shall forward any money submitted for placement in an escrow account in accordance with regulations promul-

gated by the commission. If, through administrative or judicial review of the violation or proposed penalty, the commission or a court of appropriate jurisdiction determines that no violation occurred or that the amount of the penalty should be reduced, the executive director shall within thirty (30) days remit the appropriate amount to the person with any interest earned on the money while in escrow. Failure to forward the proposed penalty amount to the executive director within thirty (30) days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. When all opportunities for administrative and judicial review have been exhausted, a failure to pay the civil penalty shall result in forfeiture of the bond or deposit in an amount not to exceed the amount of the penalty imposed. The commission may promulgate regulations regarding a waiver from the requirement to post a penalty payment bond upon a showing by the operator of an inability to post the bond.

(4) When a permittee violates this chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit issued any director, officer, general partner, joint venturer in or authorized agent of the permittee who willfully and knowingly authorized, ordered or carried out that violation shall be subject to separate civil penalties in the same amount as penalties that may be imposed upon a person under subsection (2) of this section.

(5) Civil penalties assessed by the commission and owed under this section may be recovered in a civil action brought by the department in the chancery or circuit court of the First Judicial District of Hinds County or in the chancery or circuit court of any county in which the surface coal mining and reclamation operation exists or in which the defendant may be found.

(6) Any provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules promulgated under that section.

SOURCES: Laws, 1979, ch. 477, § 23; Laws, 1995, ch. 627, § 12; Laws, 1997, ch. 306, § 27, eff from and after passage (approved March 10, 1997).

Cross References — Liability under this provision of persons conducting coal exploration activities, see § 53-9-41.

Review of penalty assessed under this provision, see § 53-9-77.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-57. Criminal penalties; violation of condition of permit or order.

Any person who willfully and knowingly violates this chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit, or makes any false statement, representation or certification or knowingly fails to make any statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under a regulation or written order of the commission promulgated or issued under this chapter, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than one (1) year, or both.

SOURCES: Laws, 1979, ch. 477, § 24; Laws, 1997, ch. 306, § 28, eff from and after passage (approved March 10, 1997).

Editor's Note — Laws, 2001, ch. 426, §§ 4 through 15 added new §§ 53-9-101 through 53-9-123 to Chapter 9 of Title 53. The new provisions of Chapter 9 were placed under the undesignated centered heading "Abandoned Mine Lands Reclamation Program," and the previously existing provisions of Chapter 9, contained in §§ 53-9-1 through 53-9-89, were placed under the undesignated centered heading "Mississippi Surface Coal Mining and Reclamation Law." Thus, the references throughout §§ 53-9-1 through 53-9-89 to "this chapter" should be to "Sections 53-9-1 through 53-9-89."

Cross References — Liability under this provision of persons conducting coal exploration activities, see § 53-9-41.

Liability under this provision of corporate director, officer, or agent for knowingly authorizing or ordering violation of an order, see § 53-9-55.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-59. Repealed.

Repealed by Laws, 1997, ch. 306, § 46, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 25, eff from and after July 1, 1979.].

Editor's Note — Former § 53-9-59 provided for the establishment of criminal penalties for failure to make or making of false statements, representations or certifications.

§ 53-9-61. Criminal penalties; resisting, preventing, impeding, or interfering with performance of duties.

Any person who, except as permitted by law, willfully resists, impedes or interferes with the commission, permit board or any authorized representative of the department in the performance of duties under this chapter shall be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than one (1) year, or both.

SOURCES: Laws, 1979, ch. 477, § 36; Laws, 1997, ch. 306, § 29, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

§ 53-9-63. Nonexclusivity of penalty provisions.

Nothing in Sections 53-9-55 through 53-9-57 shall be construed to eliminate any additional enforcement right or procedures which are available under state law to a state agency but which are not specifically enumerated in this chapter.

SOURCES: Laws, 1979, ch. 477, § 26; Laws, 1997, ch. 306, § 30, eff from and after passage (approved March 10, 1997).

Cross References — Liability of persons conducting coal exploration activities for damages to surface lands, see § 53-9-41.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 158.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-65. Release of bond; objections; hearing; bond forfeiture.

(1) The permittee may file an application with the permit board for the release of all or part of a performance bond or other collateral. The permittee and the permit board shall give notice of the pending bond release application by publication in the form as the commission by regulation may require. The permit board, after adequate inspection and evaluation of the reclamation work involved, shall decide whether or not to release all or part of the bond or other collateral and shall notify the permittee in writing of its decision. If the permit board's decision is not to release all or part of the bond or other collateral, the permit board shall state in writing the reasons for its decision and recommend corrective actions necessary to secure the release.

(2) The permit board may release in whole or in part the bond or other collateral if the permit board is satisfied the reclamation covered by the bond or other collateral or portion thereof has been accomplished as required by this chapter according to the following schedule:

(a) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the approved mining and reclamation plan, up to sixty percent (60%) of the bond or other collateral for the applicable permit area may be released, but the amount of the unreleased portion of the bond or other collateral shall not be less than the amount necessary to assure completion of the reclamation work by a third party in the event of default by the operator.

(b) After revegetation has been established on the regraded mined lands in accordance with the approved mining and reclamation plan, the permit board, when determining the amount of bond or other collateral to be released after successful revegetation has been established, shall retain that amount of bond or other collateral for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility in the regulations promulgated under Section 53-9-45 for reestablishing revegetation. No part of the bond or other collateral shall be released under this paragraph if the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by the regulations promulgated under Section 53-9-45, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed in accordance with the regulations promulgated under Section 53-9-25. If a silt dam is to be retained as a permanent impoundment under the regulations promulgated under Section 53-9-45, the portion of bond or other collateral may be released under this paragraph if provisions for sound future maintenance by the operator or the landowner have been made with and approved by the permit board.

(c) When the operator has completed successfully all surface coal mining and reclamation activities, the remaining portion of the bond or other collateral may be released, but shall not be released before the expiration of the period specified for operator responsibility in the regulations promulgated under Section 53-9-45. No bond shall be fully released until all reclamation requirements of this chapter are fully met.

(3) Any interested party or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to the operations, may submit written comments on the proposed release from bond or other collateral, and request a public hearing concerning the bond release application under Section 49-17-29. The failure of any person to submit comments within the time required shall not preclude action by the permit board. Any request for a public hearing concerning the bond release application shall be made in writing within thirty (30) days after the last publication of the notice described in subsection (1) of this section. The permit board may on its own motion hold a public hearing

concerning the bond release application. If requested, the permit board shall hold a public hearing to obtain comments from the public on the application for bond release. The date, time and location of the public hearings shall be advertised by the permit board in the same manner as provided for the publication of notice for advertisement of land ownership under Section 53-9-37. The last public hearing notice shall be published at least seven (7), but no more than fourteen (14) days before the scheduled public hearing date. If all persons requesting the public hearing stipulate agreement before the requested public hearing, the public hearing may be cancelled at the discretion of the permit board.

(4) Within thirty (30) days after the permit board takes action on the bond release application as recorded in the minutes of the permit board, any person who filed a written comment or requested or participated in the public hearing under this subsection may request a formal hearing before the permit board regarding its initial decision to grant or deny the bond release. The formal hearing shall be conducted as provided by Section 49-17-29. Upon conclusion of the formal hearing, the permit board shall enter into its minutes its final decision affirming, modifying or reversing its prior action on the bond release application. Any appeal from that decision may be taken by any person who participated as a party in the formal hearing in the manner provided in Section 49-17-29.

(5)(a) If a surface coal mining and reclamation operation is not proceeding in accordance with this chapter or the permit, the operation represents an imminent threat to the public health, welfare and the environment, and the operator has failed, within thirty (30) days after written notice to the operator and opportunity for a formal hearing, to take appropriate corrective action, a forfeiture proceeding may be commenced against the operator for any performance bond or other collateral posted by the operator.

(b) A forfeiture proceeding against any performance bond or other collateral shall be commenced and conducted according to Sections 49-17-31 through 49-17-41.

(c) If the commission orders forfeiture of any performance bond or other collateral, the entire sum of the performance bond or other collateral shall be forfeited to the department. The funds from the forfeited performance bond or other collateral shall be used to pay for reclamation of the permit area and remediation of any offsite damages resulting from the operation. Any surplus performance bond or other collateral funds shall be refunded to the operator or corporate surety.

(d) Forfeiture proceedings shall be before the commission and an order of the commission under this subsection shall be a final order. If the commission determines that forfeiture of the performance bond or other collateral should be ordered, the department shall have the immediate right to all funds of any performance bond or other collateral, subject only to review and appeals allowed under Section 49-17-41.

(e) If the operator cannot be located for purposes of notice, the department shall send notice of the forfeiture proceeding, certified mail, return receipt requested, to the operator's last known address. The department shall also publish notice of the forfeiture proceeding in the same manner as provided for the publication of notice for the advertisement of land ownership under Section 53-9-37. Any formal hearing on the bond forfeiture shall be set at least thirty (30) days after the last notice publication.

(f) If the performance bond or other collateral is insufficient to cover the costs of reclamation of the permit area or remediation of any offsite damages, the commission may initiate a civil action to recover the deficiency amount in the county in which the surface coal mining operation is located.

(g) If the commission initiates a civil action under this section, the commission shall be entitled to any sums necessary to complete reclamation of the permit area and remediate any offsite damages resulting from that operation and attorney's fees.

SOURCES: Laws, 1979, ch. 477, § 27; Laws, 1997, ch. 306, § 31, eff from and after passage (approved March 10, 1997).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2)(b). The words "regulations promulgated under to Section 53-9-45" were changed to "regulations promulgated under Section 53-9-45." The Joint Committee ratified the correction at its May 16, 2002, meeting.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-67. Civil action; costs; nonexclusivity of provisions; limitations on liability.

(1) Except as provided in subsection (2) of this section, any interested party may commence a civil action to compel compliance with this chapter:

(a) Against the state or a state instrumentality or agency which is alleged to be in violation of this chapter or any rule, regulation, order or permit issued under this chapter, or against any other person who is alleged to be in violation of this chapter or any rule, regulation, order or permit issued under this chapter; or

(b) Against the department, commission or permit board if there is alleged a failure of any one or more of them to perform any nondiscretionary act or duty under this chapter.

(2) No action may be commenced:

(a) Under subsection (1)(a) of this section, (i) before sixty (60) days after the plaintiff has given notice in writing of the violation to the executive director, chief legal counsel of the department, the Attorney General of the state and to any alleged violator, or (ii) if the commission has commenced and is diligently prosecuting a civil action in a court of the state or the United States to require compliance with this chapter, or any rule, regulation, order or permit issued under this chapter, but in any action any interested party may intervene as a matter of right;

(b) Under subsection (1)(b) of this section before sixty (60) days after the plaintiff has given notice in writing of the action to the executive director, chief legal counsel of the department and commission, in the manner as the commission shall by regulation prescribe. That action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(3)(a) Any action under this section alleging a violation of this chapter or any rule or regulation promulgated under this chapter may be brought only in the chancery court of the judicial district in which the surface coal mining operation complained of is located, except any action brought under subsection (1)(b) of this section shall be brought in the chancery court of the First Judicial District of Hinds County.

(b) In any action under this section the permit board or commission, if not a party, may intervene as a matter of right.

(4) The court, in issuing a final order in any action brought under subsection (1) of this section, may award costs of litigation, including attorney and expert witness fees, to any party, whenever the court determines that award is appropriate, but the permittee shall not be entitled to an award of attorney's fees unless the court determines that the action of the person opposing the permittee was frivolous, unreasonable or without foundation. No award of attorney's fees or expert witness fees shall be made against a person having an interest in real property that is or may be adversely affected by the surface coal mining operations. The court may, if a preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with state law.

(5) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or the common law, to seek enforcement of this chapter and the rules and regulations promulgated under this chapter, or to seek any other relief, including relief against the department, commission or the permit board.

(6) Any provisions of this section and chapter regarding liability for the costs of clean-up, removal, remediation or abatement of any pollution, hazardous waste or solid waste shall be limited as provided in Section 49-17-42 and rules under that section.

SOURCES: Laws, 1979, ch. 477, § 28; Laws, 1995, ch. 627, § 13; Laws, 1997, ch. 306, § 32, eff from and after passage (approved March 10, 1997).

Editor's Note — Chapter 408 of Laws, 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-69. Inspection; cessation order; suspension or revocation of permit; hearing; request to attorney general to institute civil action; nonexclusivity of provisions; assessing costs and expenses.

(1)(a) When, on the basis of any information available, including receipt of information from any person, the executive director or state geologist as the executive director's designee has reason to believe that any person is in violation of this chapter, any regulation or written order of the commission issued or promulgated under this chapter or any condition of a permit, the executive director or state geologist as the executive director's designee shall immediately order inspection of the surface coal mining operation at which the alleged violation is occurring unless the information available is a result of a previous inspection of the surface coal mining operation. When the inspection results from information provided to the executive director or state geologist by any person who is not an employee of the department, the executive director or state geologist as the executive director's designee shall notify the person when the inspection is proposed to be carried out and the person shall be allowed to accompany the inspector during the inspection.

(b) When, on the basis of any inspection, the executive director or the executive director's authorized representative determines that any condition or practices exist or that any permittee is in violation of this chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit and the condition, practice or violation also creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources, the executive director or the executive director's authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion of those operations relevant to the condition, practice or violation. The cessation order shall remain in effect until the executive director or the executive director's authorized representative determines that the condition, practice or violation has been abated or until the order is modified, vacated or terminated by the executive director or the executive director's authorized representative. If the commission, executive director or the executive director's authorized representative finds that the ordered cessation of surface coal mining and reclamation operations, or any portion of those operations shall not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the commission, executive director or the executive director's authorized representative shall, in addition to the cessation order, impose obligations on the operator requiring the operator to take whatever steps the commission, executive director or the executive director's authorized representative deems necessary to abate the imminent danger or the significant environmental harm.

(c)(i) When, on the basis of an inspection, the executive director or the executive director's authorized representative determines that any permittee is in violation of this chapter, any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit but that violation does not create an imminent danger to the health and safety of the public or cannot be reasonably expected to cause significant imminent environmental harm to land, air or water resources, the commission, executive director or the executive director's authorized representative shall issue an order to the permittee or agent of the permittee setting a reasonable time of not more than ninety (90) days for the abatement of the violation and if deemed necessary by the commission, executive director or the executive director's authorized representative ordering an immediate cessation of activities violating or resulting in the violation of this chapter, the regulations promulgated under this chapter or any condition or limitation of a permit.

(ii) If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the commission, the executive director or the executive director's authorized representative finds that the violation has not been abated, the commission, the executive director or the executive director's authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or the portion of those operations relevant to the violation. The cessation order shall remain in effect until the commission, the executive director or the executive director's authorized representative determines that the violation has been abated or until that order is modified, vacated or terminated by the commission, the executive director or the executive director's authorized representative. In the cessation order issued by the commission, the executive director or the executive director's authorized representative, the commission, the executive director or the executive director's authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include measures in the order necessary to achieve that abatement.

(d) When, on the basis of an inspection, the executive director has reason to believe that a pattern of violations of this chapter, any regulation promulgated under this chapter or any condition of a permit exists or has existed, and if the executive director also finds that the violations are caused by the unwarranted failure of the permittee to comply with this chapter, any regulation promulgated under this chapter or any condition of a permit, or that the violations are willfully caused by the permittee, the executive director shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked by the permit board. Upon the permittee's failure to show cause to the satisfaction of the executive director or the executive director's authorized representative as to why the permit should not be suspended or revoked, the executive director or the executive director's authorized representative shall present this information to the permit board and request that the permit board suspend or revoke the permit. The permit board shall decide the executive director's request under the procedures of Section 49-17-29(4) and (5). Any request by an interested party for a formal hearing regarding the permit board's initial decision on suspension or revocation of the permit or any appeal of the final decision following the formal hearing by any person who participated as a party in the formal hearing may be taken as provided under Section 49-17-29(4) and (5).

(e) The permittee or other interested party may request a formal hearing concerning an order of the commission issued under paragraph (b) or (c) of this subsection as provided under Section 49-17-41.

(2)(a) The commission may institute a civil action for relief, including a permanent or temporary injunction or any other appropriate order, in the chancery court of the county or judicial district in which the surface coal mining and reclamation operation is located, in which the permittee has its principal office, or in the First Judicial District of Hinds County when the permittee or its agent:

(i) Violates or fails or refuses to comply with any permit, order or decision issued by the permit board or commission under this chapter;

(ii) Interferes with, hinders or delays the commission, permit board, department, executive director or any authorized representative of the executive director in carrying out this chapter;

(iii) Refuses to admit any authorized representative of the executive director, commission, permit board or department to the mine;

(iv) Refuses to permit inspection of the mine by that authorized representative;

(v) Refuses to furnish any information or report requested by the commission, permit board or department in furtherance of this chapter; or

(vi) Refuses to permit access to and copying of any records as the commission, permit board or department determines necessary in carrying out this chapter.

(b) The court shall have jurisdiction to provide any relief as may be appropriate. Preliminary injunctions shall be issued in accordance with state law. The commission may obtain mandatory or prohibitory injunctive relief, either temporary or permanent, and in cases of imminent and substantial hazard or endangerment to the environment or public health, it is not necessary that the commission plead or prove: (i) that irreparable damage would result if the injunction did not issue; (ii) that there is no adequate remedy at law; or (iii) that a written complaint or commission order has first been issued for the alleged violation. Any relief granted by the court to enforce an order under subsection 2(a)(i) of this section shall continue in effect until the completion or final termination of all proceedings for review of that order under this chapter unless, before that time, the court granting the relief sets it aside or modifies it.

(3) Nothing in this section shall be construed to eliminate any additional enforcement rights or procedures which are available under state law to a state agency but which are not specifically stated in this section.

(4) When an order is issued under this section, or as a result of any administrative proceeding under this chapter, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney's fees, as determined by the commission to have been reasonably incurred by that person for or in conjunction with that person's participation in the proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review, or the commission, resulting from administrative proceedings deems proper.

SOURCES: Laws, 1979, ch. 477, § 29; Laws, 1997, ch. 306, § 33; Laws, 1998, ch. 373, § 3, eff from and after passage (approved March 16, 1998).

Cross References — Assessment of civil penalty upon issuance of citation or cessation order, see § 53-9-55.

Liability of corporate director, officer, or agent for knowingly authorizing or ordering violation of an order under this provision, see § 53-9-55.

Liability for criminal penalties when order issued under this provision is violated, see § 53-9-57.

Formal hearing and stay of action pursuant to this provision, see § 53-9-77.

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals § 157.

CJS. 58 C.J.S., Mines and Minerals § 262.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-71. Designation of lands as unsuitable for surface coal mining operations.

(1)(a) The commission shall establish a planning process enabling objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of the state are unsuitable for all or certain types of surface coal mining operations under the standards set forth in paragraphs (b) and (c) of this subsection. Surface coal mining and reclamation permits may be issued before completion of the planning process. That designation shall not prevent the mineral exploration under this chapter of any area designated as unsuitable.

(b) Upon petition under subsection (2) of this section, the commission shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.

(c) Upon petition under subsection (2) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if the operations will:

(i) Be incompatible with existing state or local land-use plans or programs;

(ii) Affect fragile or historic lands in which those operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems;

(iii) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply from surface or subsurface sources or of food or fiber products. These lands shall include, but not be limited to, aquifers and aquifer recharge areas; or

(iv) Affect natural hazard lands in which the operations could substantially endanger life and property, including, but not limited to, areas subject to frequent flooding and areas of unstable geology.

(d) The state geologist shall be responsible for surface coal mining lands review and shall assist the commission and, as practicable, regional and local governmental units in developing:

(i) A data base and inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and allow reclamation of surface coal mining operations;

(ii) A method or methods for implementing land-use planning decisions concerning surface coal mining operations; and

(iii) Proper notices and opportunities for public participation, including, but not limited to, a public hearing before making any designation or redesignation, under this section.

(e) Determinations of the unsuitability of land for surface coal mining, under this section shall be integrated as closely as possible with present and future land-use planning and regulation processes at the federal, state and local governmental levels.

(f) This section shall not apply to lands on which surface coal mining operations are being conducted under a permit issued under this chapter.

(2)(a) Any interested party may petition the commission to have an area designated as unsuitable for surface coal mining operations, or to have a designation terminated. A petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within six (6) months after receipt of the petition, the commission shall hold a public hearing in the county in which the affected area is located. The commission shall provide appropriate notices and publications of the date, time and location of that hearing. After an interested party has filed a petition, but before the hearing required by this subsection is held, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after the public hearing, the commission shall issue and furnish to the petitioner and any other party participating in the hearing a written decision regarding the petition, and the reasons for its decision. If all the petitioners stipulate agreement before the requested hearing and withdraw their request, the commission may cancel the public hearing. Any interested party aggrieved by a decision of the commission under this section may request a formal hearing as provided in Section 49-17-41. Any person who participated as a party in the formal hearing may appeal the final decision of the commission as provided in Section 49-17-41.

(b) The commission shall promulgate regulations not less stringent than federal regulations regarding procedures for designating lands unsuitable for surface coal mining, including procedures for the content and submission of petitions and notice and public hearing requirements.

(3) Before designating any land areas as unsuitable for surface coal mining operations, the state geologist shall prepare a detailed statement on:

(a) The potential coal resources of the areas;

(b) The demand for coal resources; and

(c) The impact of the designation on the environment, the economy of the state and the supply of coal.

(4) After July 1, 1979, and subject to valid rights, no surface coal mining operations shall be permitted:

(a) On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under Section 1276(a) of Title 16 of the United States Code, and National Recreation Areas designated by Act of Congress;

(b) On any lands within the boundaries of any state park, state wildlife refuge, state forest, recorded state historical landmark, state historic site, state archaeological landmark, or city or county park, forest or historical area. The commission may, for good cause shown and after a public hearing, make exceptions to this paragraph;

(c) On any federal lands within the boundaries of any national forest, unless the United States Secretary of Agriculture or the secretary's designee finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface coal mining operations or the surface operations and impacts incident to an underground coal mine;

(d) Which will adversely affect any publicly owned park or places included in the national register of historic sites unless approved jointly by the commission and any federal, state or local agency with jurisdiction over the park or the historic site;

(e) Within one hundred (100) feet of the outside right-of-way line of any public road except where mine access roads or haulage roads join the right-of-way line, unless the commission authorizes those roads to be relocated or the area affected to lie within one hundred (100) feet of the road and if, after public notice and opportunity for public hearing in the county in which the surface coal mining and reclamation operations are located, the commission makes a written finding that the interests of the public and the landowners affected thereby will be protected; or

(f) Within three hundred (300) feet of any occupied dwelling, unless waived by the owner of that dwelling, or any public building, school, church, community or institutional building, public park, or within one hundred (100) feet of a cemetery.

(5) Those lands designated prior to July 1, 1979, as unsuitable for surface mining under the Mississippi Surface Mining and Reclamation Law, and all applicable rules and regulations promulgated under that law are unsuitable for surface coal mining under this section.

SOURCES: Laws, 1979, ch. 477, § 30; Laws, 1997, ch. 306, § 34; Laws, 2002, ch. 341, § 1, eff from and after July 1, 2002.

Cross References — Necessity that proposed mining area not be in an area designated unsuitable for surface coal mining in order for permit or revision application to be approved, see § 53-9-33.

§ 53-9-73. Cooperation with Secretary of Interior.

The commission may enter into a cooperative agreement with the United States Secretary of the Interior to provide for state regulation of surface coal mining and reclamation operations on federal lands within the state.

SOURCES: Laws, 1979, ch. 477, § 31; Laws, 1997, ch. 306, § 35, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-75. Application of chapter to public corporations.

Any agency, unit or instrumentality of federal, state or local government, including any public-owned utility or publicly-owned corporation of federal, state or local government, which proposes to engage in surface coal mining operations subject to this chapter, shall comply with this chapter.

SOURCES: Laws, 1979, ch. 477, § 32; Laws, 1997, ch. 306, § 36, eff from and after passage (approved March 10, 1997).

§ 53-9-77. Administrative review; appeal of decisions of the permit board.

(1) Unless otherwise expressly provided in this chapter, any interested party aggrieved by any action of the permit board taken under this chapter may request a formal hearing before the permit board as provided in Section 49-17-29(4). Any interested party aggrieved by any action of the commission, executive director or the executive director's authorized representative taken under this chapter may request a formal hearing before the commission as

provided in Section 49-17-41. Any person who participated as a party in a formal hearing before the permit board may appeal from a final decision of the permit board made under this chapter as provided in Section 49-17-29(5). Any person who participated as a party in a formal hearing before the commission may appeal from a final decision of the commission made under this chapter as provided in Section 49-17-41.

(2)(a) Any public hearing of the permit board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the permit board under Section 49-17-29(4)(a). Any formal hearing of the permit board provided for under this chapter shall be deemed to be the same hearing as otherwise afforded to any interested party by the permit board under Section 49-17-29(4)(b).

(b) Any public hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-35. Any formal hearing of the commission provided for under this chapter shall be deemed to be the same hearing as afforded under Section 49-17-41.

(3)(a) In conducting any formal hearing under this chapter the permit board shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-29.

(b) In conducting any formal hearing under this chapter the commission shall have the same authority to subpoena witnesses, administer oaths, examine witnesses under oath and conduct the hearing as provided in Section 49-17-41.

(4)(a) The commission may appoint a hearing officer to conduct any formal hearing under this chapter. The hearing officer shall have the same authority to conduct the hearing as provided the commission under Section 49-17-41.

(b) Upon written request by an alleged violator under Section 53-9-69, the commission or the hearing officer shall conduct a formal hearing and may, upon the basis of evidence presented at the hearing, stay any action taken by the executive director or the executive director's authorized representative under Section 53-9-69. The hearing officer may require a bond, if the hearing officer stays the action.

(5) Except as provided in Section 53-9-67, the availability of judicial review under this section shall not limit any rights established under Section 53-9-67.

SOURCES: Laws, 1979, ch. 477, § 33; Laws, 1997, ch. 306, § 37; Laws, 1998, ch. 373, § 4, eff from and after passage (approved March 16, 1998).

RESEARCH REFERENCES

Am Jur. 54 Am. Jur. 2d, Mines and Minerals §§ 155.

§ 53-9-79. Repealed.

Repealed by Laws, 1997, ch. 306, § 47, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 34.].

Editor's Note — Former § 53-9-79 provided for judicial review of final decisions of the surface mining review board.

§ 53-9-81. Inapplicability of chapter.

This chapter shall not apply to any of the following activities:

(a) The extraction of coal by a landowner for that landowner's own noncommercial use from land owned or leased by the landowner; and

(b) The extraction of coal as an incidental part of federal, state or local financed highways or other construction under regulations promulgated by the commission.

SOURCES: Laws, 1979, ch. 477, § 35; Laws, 1997, ch. 306, § 38, eff from and after passage (approved March 10, 1997).

§ 53-9-83. Lease of state coal deposits.

(1) This section applies where coal owned by the state under land, the surface rights to which are owned by a surface owner as defined in this section, is to be mined by methods other than underground mining techniques.

(2) The state shall not enter into any lease of state coal deposits until the surface owner has given written consent to enter and commence surface coal mining and reclamation operations and the commission has obtained evidence of that consent. Written consent given by any surface owner before July 1, 1979, shall be deemed sufficient for the purposes of complying with this section.

(3) In order to minimize disturbance to surface owners from surface coal mining of state coal deposits and to assist in the preparation of comprehensive land-use plans, the state geologist shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to declare a preference for or against the offering of the deposit under this land for lease. The state shall, in its discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have declared a preference against the offering of the deposits for lease.

(4) For the purpose of this section, "surface owner" means the natural person or persons, or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section, who:

(a) Hold legal or equitable title to the land surface;

(b) Have their principal place of residence on the land or are personally conducting farming or ranching operations upon a farm or ranch unit which is to be affected by surface coal mining and reclamation operations, or receive directly a significant portion of their income, if any, from those farming or ranching operations; and

(c) Have met the conditions of paragraphs (a) and (b) for at least three (3) years before granting consent.

In computing the three-year period, the commission may include periods during which title was owned by a relative of that person by blood or marriage during which period the relative would have met the requirements of this subsection.

(5) Nothing in this section shall be construed as increasing or diminishing any property rights held by the state or by any other landowner.

SOURCES: Laws, 1979, ch. 477, § 38; Laws, 1997, ch. 306, § 39, eff from and after passage (approved March 10, 1997).

§ 53-9-85. Enforcement and protection of water rights.

(1) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, that person's interest in water resources affected by a surface coal mining operation.

(2) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of that person's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately resulting from the surface coal mining or reclamation operation.

SOURCES: Laws, 1979, ch. 477, § 39; Laws, 1997, ch. 306, § 40, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-87. Training, examination, and certification of persons responsible for blasting.

The commission shall promulgate regulations requiring the training, examination and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

SOURCES: Laws, 1979, ch. 477, § 40; Laws, 1997, ch. 306, § 41, eff from and after passage (approved March 10, 1997).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 53-9-89. Surface Coal Mining and Reclamation fund; deposit of funds.

(1)(a) There is created in the State Treasury a fund to be designated as the "Surface Coal Mining and Reclamation Fund." The fund shall contain three (3) accounts, designated as the "Surface Coal Mining Program Operations Account," the "Surface Coal Mining Reclamation Account," and the "Abandoned Mine Lands Reclamation Account."

(b) Monies in the Surface Coal Mining Program Operations Account shall be used to pay the reasonable direct and indirect costs of administering and enforcing this chapter. Monies in the Surface Coal Mining Reclamation Account shall be used to pay for the reclamation of lands for which bonds or other collateral were forfeited.

(c) The Abandoned Mine Lands Reclamation Account shall receive all state and federal appropriations, grants and donations for the purposes of the reclamation of abandoned mine lands under this chapter, and such funds shall be made available to the commission to be used as provided in this section for the purposes of abandoned mine reclamation under this chapter and the regulations of the commission. Funds in the Abandoned Mine Land Account may be used for the following purposes:

(i) Reclamation and restoration of land and water resources adversely affected by past coal mining, or by past noncoal mining if approved by the secretary, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned mine processing areas, and abandoned mine refuse disposal areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by mine drainage including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal in situs; prevention, abatement and control of mine subsidence; prevention, abatement and control of storm water runoff from and erosion at mine sites; and the sloping and revegetation of mine pits and highwalls.

(ii) Acquisition of land as provided for in this chapter.

(iii) Grants to accomplish the purposes of this chapter.

(iv) Administrative expenses of the department to accomplish the purposes of this chapter.

(v) All other necessary expenses to accomplish the purpose of reclaiming abandoned mine lands or of protecting public health, safety and general welfare from adverse effects of mining practices at abandoned mine lands.

(d) Expenditures may be made from the fund upon requisition by the executive director.

(e) The fund shall be treated as a special trust fund. Interest earned on the principal shall be credited by the Treasurer to the appropriate account in the fund.

(f) The Surface Coal Mining Program Operations Account may receive monies from any available public or private source, including, but not limited to, fees, interest, grants, taxes, public and private donations, petroleum violation escrow funds or refunds, and appropriated funds, but excluding fines, penalties and the proceeds from the forfeiture of bonds or other collateral. The Surface Coal Mining Reclamation Account may receive monies from fines, penalties, the proceeds from the forfeiture of bonds or other collateral and interest.

(2) All funds received through the payment of fees, loans, grants, penalties, bond forfeitures and forfeitures of other collateral, less attorneys' fees, shall be deposited in the appropriate account in the Surface Coal Mining and Reclamation Fund.

SOURCES: Laws, 1979, ch. 477, § 41; Laws, 1997, ch. 306, § 42; Laws, 2001, ch. 426, § 3, eff from and after July 1, 2001.

§ 53-9-91. Repealed.

Repealed by Laws, 1997, ch. 306, § 48, eff from and after passage (approved March 10, 1997).

[Laws, 1979, ch. 477, § 42]

Editor's Note — Former § 53-9-91 authorized the commission to establish and collect certain fees.

ABANDONED MINE LANDS RECLAMATION PROGRAM

SEC.
53-9-101. Priorities for expenditure of funds from Mine Lands Reclamation Account; certain sites and areas ineligible for expenditures; projects involving protection, repair, replacement, construction, or enhancement of certain utilities.
53-9-103. Only abandoned mines eligible for program expenditures.
53-9-105. Program to comply with federal law; required filings; public hearing and comment period; liability.
53-9-107. Right of entry upon property adversely affected by past coal mining; order and required findings; right of entry upon property to conduct studies or exploratory work.
53-9-109. Acquisition of land adversely affected by past coal mining; sale of acquired land; administrative responsibility for acquired land; grants.
53-9-111. Review of commission action; formal hearing; landowner rights and remedies.
53-9-113. Itemization of funds expended; filing of statement in county land records detailing increase in land value from expenditure of fund; statement to constitute lien upon land; hearing and appeal.
53-9-115. Governor may request action against certain hazards caused by mining

of minerals other than coal; limitations on funds available; acquisition of interest in land.
53-9-117. Interdepartmental cooperation; provision of technical expertise, personnel, equipment, materials, and supplies.
53-9-119. Injunctions.
53-9-121. Power and authority to implement program; promulgation of rules and regulations; cooperative projects.
53-9-123. Authority with regard to land affected by noncoal mining practices; agreement of landowner; required findings; limitations on expenditure of funds.

§ 53-9-101. Priorities for expenditure of funds from Mine Lands Reclamation Account; certain sites and areas ineligible for expenditures; projects involving protection, repair, replacement, construction, or enhancement of certain utilities.

(1) Expenditures of funds from the Abandoned Mine Lands Reclamation Account on eligible lands and water shall reflect the following priorities:

(a) The protection of public health, safety, and property from extreme danger of adverse effects of coal mining practices;

(b) The protection of public health and safety from adverse effects of coal mining practices; and

(c) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity.

(2) After certification under 30 USC 1240a(a) by the Governor to the United States Secretary of the Interior that all of the priorities stated in subsection (1) of this section for eligible lands and waters have been achieved, and upon concurrence by the secretary with that certification, funds in the Abandoned Mine Lands Reclamation Account may be used for reclamation at abandoned mine lands that were mined or processed for or effected by the mining or processing of noncoal minerals. Expenditure of funds for land, water and facilities referred to in this subsection shall reflect the following priorities in the order stated, in lieu of the priorities stated in subsection (1) of this section:

(a) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of mineral mining and processing practices;

(b) The protection of public health, safety and general welfare from adverse effects of mineral mining and processing practices;

(c) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(3) Sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978, 42 USC 7901 et seq., or which have

been listed for remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601 et seq., shall not be eligible for expenditure from the Abandoned Mine Lands Reclamation Account.

(4) Reclamation projects involving the protection, repair, replacement, construction or enhancement of utilities, such as those relating to water supply, roads and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices, shall be deemed part of the objectives set forth and undertaken as they relate to the priorities stated in subsection (2) of this section.

SOURCES: Laws, 2001, ch. 426, § 4; Laws, 2008, ch. 343, § 2, eff from and after passage (approved Mar. 25, 2008.)

§ 53-9-103. Only abandoned mines eligible for program expenditures.

Only abandoned mine lands are eligible for reclamation or drainage abatement expenditures from the Abandoned Mine Lands Reclamation Account.

SOURCES: Laws, 2001, ch. 426, § 5, eff from and after July 1, 2001.

§ 53-9-105. Program to comply with federal law; required filings; public hearing and comment period; liability.

(1) The department, through the Office of Geology, shall establish and maintain a state reclamation program for abandoned mines which complies with Subchapter IV of the federal Surface Mining Control and Reclamation Act of 1977, 30 USCS 1231 through 1243.

(2) For any year in which the department intends to conduct abandoned mine lands reclamation with amounts held in the Abandoned Mine Lands Reclamation Account, the executive director shall submit to the secretary an application for the support of the state program and implementation of specific reclamation projects. Such requests shall include information required by the secretary. This may include, but is not limited to:

(a) A general description of each proposed project;

(b) A priority evaluation of each proposed project;

(c) A statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;

(d) An estimate of the cost for each proposed project;

(e) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(f) An identification of lands or interest therein to be acquired and the estimated cost; and

(g) In each year after the first in which a plan is filed, an inventory of each project funded under the previous year's grant. This inventory shall include details of financial expenditures on each project together with a brief description of each project, including project locations, the landowner's name, acreage, and the type of reclamation or abatement performed.

(3) The reported costs for each proposed project shall include: actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(4) The executive director shall make reports on operations of the reclamation program as required by the secretary or by Congress.

(5) The executive director shall at all times accept and consider comments regarding annual grant applications and the eligibility, priority ranking and selection of lands for reclamation. At least thirty (30) days prior to the submission of each annual grant application to the secretary, the executive director shall provide for a public hearing and shall publish a notice regarding the proposed grant application and the public hearing in a newspaper of general circulation in the state. The public notice shall state that a hearing will be held, generally outline the grant application, and solicit comments regarding the application. A listing and identification of all projects included in the grant application shall be mailed to all persons who have requested written notification of the annual grant application and shall be available to any person upon request. At the public hearing for review of an annual grant application, any person may appear before the executive director or his or her designee and be heard on the record. The executive director may receive documentary or other evidence for inclusion in the record. The executive director shall fix a time for the closing of the record and may, in his discretion, receive other comments or evidence that he deems appropriate after the public hearing and before the closing of the record. A copy of the record shall be included with the grant application to the secretary.

(6) The state shall not be liable under any provision of federal law for any costs or damages as a result of action taken or omitted in the course of carrying out the state reclamation program approved by the secretary. This subsection shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state. Reckless, willful or wanton misconduct shall constitute gross negligence. However, nothing in this subsection shall be deemed to waive any immunity provided by Mississippi law to the state or its employees, or to waive the protection afforded the state by the Eleventh Amendment to the United States Constitution.

SOURCES: Laws, 2001, ch. 426, § 6, eff from and after July 1, 2001.

§ 53-9-107. Right of entry upon property adversely affected by past coal mining; order and required findings; right of entry upon property to conduct studies or exploratory work.

(1) If the commission issues an order making a finding in writing with supporting facts that:

(a) Land or water resources have been adversely affected by past coal mining practices;

(b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken;

(c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available;

(d) The owners will not give permission for the state or its agents, employees, or contractors to enter upon their property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; then, thirty (30) days after giving notice by mail to the owners if known or if not known, by posting notice on the premises and advertising once in a newspaper of general circulation in the municipality or county where the land lies, the executive director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the landowner does not file an objection with the commission. If, within the thirty-day notice period, the landowner files an objection with the commission, the commission will schedule a hearing on the matter to be conducted under Section 49-17-41. After a hearing on the matter, the commission will issue an order including findings of facts and conclusions of law, which, if adverse to the landowner, may be appealed under Section 49-17-41. Such entry, if ordered by the commission, shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or of trespass. The funds expended for this work and the benefits accruing to the premises entered on shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of such entry. This provision is not intended to create new rights of action or eliminate existing immunities.

(2) The commission, its agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal and noncoal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass.

SOURCES: Laws, 2001, ch. 426, § 7, eff from and after July 1, 2001.

§ 53-9-109. Acquisition of land adversely affected by past coal mining; sale of acquired land; administrative responsibility for acquired land; grants.

(1) The commission, with the approval of the secretary, may acquire title in the name of the state to any land or interest in any land by purchase, donation, or condemnation if the land or interest is adversely affected by past coal mining practices and upon a determination that acquisition of this land is necessary to successful reclamation and that:

(a) The acquired land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices will serve recreation and historical purposes, conservation and reclamation purposes or provide open space benefits;

(b) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices;

(c) Acquisition of coal refuse disposal sites and all coal refuse at the site will serve the purpose of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(2) The commission shall only acquire land that is necessary for the reclamation work or the post reclamation use of the land and acquisition shall be limited by the scope of the project. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal mining practices.

(3) In addition to the authority to acquire land under subsection (1) of this section, the commission, with the approval of the secretary, is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer acquired land to any agency of the state authorized to own and operate real property or to a political subdivision of the state, or to any person, firm, association, or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in 30 USCS 1240 or persons dislocated as the result of natural disasters or catastrophic failures from any cause. These activities shall be accomplished under the terms and conditions required for the secretary, which may include transfers of land with or without monetary consideration: to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or

corporation. No part of the funds provided in this chapter may be used to pay the actual construction costs of housing. The commission, with approval of the secretary, and with grants received for the purposes of this subsection may make grants and commitments for grants and may advance money under the same terms and conditions as it may require of the state, or any department, agency, or instrumentality of the state, or any public body or nonprofit organization.

(4) Where land acquired is deemed to be suitable for industrial, commercial, residential, or recreational development, the commission, with the approval of the secretary, may sell, after appropriate public notice, the land by public sale under a system of competitive bidding, in accordance with the regulations prescribed by the executive director, at not less than fair market value, and the executive director is to ensure that the lands are put to proper use consistent with local, state or federal land use plan, if any, for the area in which the land is located. The executive director, when requested and after appropriate notice, shall hold a public hearing in the county or counties or the appropriate subdivisions of the state in which lands acquired under this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

(5) The commission, with the approval of the secretary, may transfer the administrative responsibility for land acquired under this section to any state, regional or local agency, department or institution, with or without cost, employing terms that will ensure the use of the land is consistent with the authorization under which the land was acquired.

(6) The commission may receive grants from the secretary when necessary to carry out provisions of this section.

SOURCES: Laws, 2001, ch. 426, § 8, eff from and after July 1, 2001.

§ 53-9-111. Review of commission action; formal hearing; landowner rights and remedies.

(1) Any landowner who has received notice of condemnation or acquisition from the commission under Section 53-9-109 may, within fifteen (15) days following the notice, make written application to the commission for a formal hearing regarding the actual need or advisability for the acquisition. The commission shall hear the landowner's grievance within thirty (30) days following the written application for a hearing and shall make a determination as to the need for the acquisition. The commission's determination shall be reflected in an order, which may be appealed under Section 49-17-41. Any landowner adversely affected by any other action of the commission under Section 53-9-109 may institute proceedings to have the action reviewed in the chancery court in the county where the property or a part of the property affected by the action is located, provided that the proceedings are filed within

thirty (30) days following the date of the action. The court may grant any relief it deems necessary, including, but not limited to, injunctive relief pending a hearing on the matter.

(2) Any landowner subject to condemnation proceedings for sale under Section 53-9-109 shall retain all rights and remedies of law provided by applicable federal and state laws governing condemnation proceedings and sale at public auction. Any landowner, his heir, assignee or personal representative shall have a prior right of purchase at fair market value or the lowest bid, whichever amount is more, over any other purchaser at the public sale provided the lands are put to proper use consistent with any local, state, or federal land use plan, if any, for the area in which the land is located.

SOURCES: Laws, 2001, ch. 426, § 9, eff from and after July 1, 2001.

§ 53-9-113. Itemization of funds expended; filing of statement in county land records detailing increase in land value from expenditure of fund; statement to constitute lien upon land; hearing and appeal.

(1) Within six (6) months after the completion of projects funded by the commission, in whole or in part, with funds from the Abandoned Mine Lands Reclamation Account to restore, reclaim, abate, control or prevent adverse effects of past mining practices on privately owned land, the executive director shall itemize the funds expended and may file a statement in the land records of the county in which the land lies together with a notarized appraisal by a qualified independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past coal mining practices, if the funds expended shall result in a significant increase in property value. The statement shall constitute a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this section, who neither consented to, participated in nor exercised control over the mining operation which necessitated the reclamation performed under this chapter.

(2) Any owner of land subject to a lien imposed pursuant to this section may, within sixty (60) days of the filing of the lien, file a petition in the chancery court of the county in which the land lies to determine the increase in the market value of the land as a result of the reclamation work. The amount determined by the court to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement required by this section. Any party aggrieved by the decision may appeal as provided by law.

(3) The lien provided in this section shall be entered in the land records in the office in the county in which the land lies. The statement shall constitute a lien upon the land as of the date of the expenditure of the monies and shall

have priority as a lien second only to the lien of real estate taxes imposed on the land. Money derived from the satisfaction of liens shall be deposited in the Abandoned Mine Reclamation Account.

SOURCES: Laws, 2001, ch. 426, § 10; Laws, 2008, ch. 343, § 3, eff from and after passage (approved Mar. 25, 2008.)

§ 53-9-115. Governor may request action against certain hazards caused by mining of minerals other than coal; limitations on funds available; acquisition of interest in land.

(1) The Governor may request the secretary to authorize the commission to fill voids, seal open or abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mining of minerals other than coal which the secretary determines could endanger life and property, constitute a hazard to public health and safety, or degrade the environment.

(2) Funds available for use in carrying out the purpose of this section shall be limited to those funds which must be allocated to the state under the provisions of 30 USC 1232(g)(1) and (5). Projects funded under this section must meet the priorities described in Section 53-9-101(1)(a), but references to coal shall not apply.

(3) In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meet the purpose of this section.

(4) The commission, with the approval of the secretary, may acquire by purchase, donation, easement or otherwise an interest in the land it determines is necessary to carry out the provisions of this section.

SOURCES: Laws, 2001, ch. 426, § 11; Laws, 2008, ch. 343, § 4, eff from and after passage (approved Mar. 25, 2008.)

§ 53-9-117. Interdepartmental cooperation; provision of technical expertise, personnel, equipment, materials, and supplies.

All departments, boards, commissions and agencies of this state shall cooperate with the commission by providing available technical expertise, personnel, equipment, materials and supplies as may be required to implement and administer the provisions of the state abandoned mine lands reclamation program.

SOURCES: Laws, 2001, ch. 426, § 12, eff from and after July 1, 2001.

§ 53-9-119. Injunctions.

The commission, in addition to any other remedies allowed by law, may initiate in the name of the state, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this chapter.

SOURCES: Laws, 2001, ch. 426, § 13, eff from and after July 1, 2001.

§ 53-9-121. Power and authority to implement program; promulgation of rules and regulations; cooperative projects.

The commission shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the abandoned mine lands reclamation program in Mississippi. The commission also shall have the power and authority to engage in cooperative projects with any other agency of the United States of America or any state or federal agency to achieve the objectives of the abandoned mine lands reclamation program in Mississippi.

SOURCES: Laws, 2001, ch. 426, § 14, eff from and after July 1, 2001.

§ 53-9-123. Authority with regard to land affected by noncoal mining practices; agreement of landowner; required findings; limitations on expenditure of funds.

The commission shall have the authority granted in Sections 53-9-107(1) and 53-9-109, as applied to land or water resources that have been adversely affected by mining practices other than coal mining practices, only upon the agreement of the current landowner(s). The commission shall have this authority only after making the findings required by Section 53-9-107(1)(a) and (b), as modified to reflect that the effects were caused by noncoal mining practices. Funds shall not be expended from the Abandoned Mine Lands Reclamation Account on lands adversely affected by mining or processing practices other than coal mining or processing practices unless and until the landowner(s) agrees to abide with all provisions of Section 53-9-113. This section does not limit the authority of the commission to perform any act authorized by the Mississippi Air and Water Pollution Control Law, Section 49-17-1 et seq., the organic act of the commission, Section 49-2-1 et seq., or the Mississippi Surface Mining and Reclamation Law, Section 53-7-1 et seq.

SOURCES: Laws, 2001, ch. 426, § 15, eff from and after July 1, 2001.

CHAPTER 10

Interstate Mining Compact

SEC.
53-10-1. Findings and purposes.
53-10-2. Membership.
53-10-3. Limitations.
53-10-4. Expenses.
53-10-5. General power of Governor and withdrawal.

§ 53-10-1. Findings and purposes.

(a) The Legislature finds and declares that:

(i) Within the state, mining constitutes a significant aspect of the state's economy.

(ii) The Interstate Mining Compact was established in 1966 to provide a forum for states having significant mining to exchange ideas on mining technology, conservation, and reclamation practices and to generate consensus policies for use as desired by member states and for input at the congressional and federal regulatory level of government.

(iii) Membership in the Compact by the state will provide the Governor, as the representative of the state on the Interstate Mining Compact Commission, direct input on significant mining issues and policies and access to ideas and sources of information, not otherwise available, which may enable the state to initiate progressive or desired policies and mining control techniques that will be to the benefit of the citizens of Mississippi and the mining industry in the state.

(b) The purposes of the Interstate Mining Compact are recognized to be to:

(i) Advance the protection and restoration of land, water, and other resources affected by mining.

(ii) Assist in the reduction, elimination, or counteracting of pollution or deterioration of land, water, and air attributable to mining.

(iii) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(iv) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.

(v) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

SOURCES: Laws, 2014, ch. 326, § 1, eff from and after July 1, 2014.

§ 53-10-2. Membership.

(a) Pursuant to the findings of the Legislature and subject to the limitations hereinafter set forth, the State of Mississippi hereby adopts the Interstate Mining Compact as embodied in the findings and purposes set forth above, and the state through the Office of the Governor is authorized to join and participate in the Interstate Mining Compact through membership on the Interstate Mining Compact Commission.

(b) The Governor may appoint a designee to serve as the Governor's official representative to the compact and to perform any functions in connection with the business of the compact.

SOURCES: Laws, 2014, ch. 326, § 2, eff from and after July 1, 2014.

§ 53-10-3. Limitations.

(a) No provisions of the Interstate Mining Compact, nor any policies of the Interstate Mining Compact Commission, shall be construed to limit, repeal, or supersede any law of the State of Mississippi.

(b) The Governor and the Legislature, or agents of either, shall have the right to inspect the books and accounts of the Interstate Mining Compact Commission at any reasonable time while the state is a member.

(c) A copy of the bylaws of the Interstate Mining Compact Commission shall be placed on file with the Director of the Office of Geology, Mississippi Department of Environmental Quality, and be available for inspection at any reasonable time by the Legislature or any interested citizen.

SOURCES: Laws, 2014, ch. 326, § 3, eff from and after July 1, 2014.

§ 53-10-4. Expenses.

The Mississippi Department of Environmental Quality may pay annually out of funds collected from Surface Coal Mining Permit Fees, or from funds granted to the state by the federal Office of Surface Mining Reclamation and Enforcement, the annual membership dues payable to the Interstate Mining Compact Commission for the membership of the State of Mississippi in that organization.

SOURCES: Laws, 2014, ch. 326, § 4, eff from and after July 1, 2014.

§ 53-10-5. General power of Governor and withdrawal.

(a) Within the limitations of this section, the Governor shall be entitled to exercise all the power of his office necessary in his judgment to maintain the state in good standing as a member and to participate therein.

(b) After the Governor has provided one (1) year's notice in writing to the governors of all other member states, the Legislature, by appropriate repealing legislation, may withdraw the state from the Interstate Mining Compact.

SOURCES: Laws, 2014, ch. 326, § 5, eff from and after July 1, 2014.

CHAPTER 11

Mississippi Geologic Sequestration of Carbon Dioxide Act

Sec.
53-11-1. Short title.
53-11-3. Legislative findings; jurisdiction.
53-11-5. Definitions.
53-11-7. Duties and powers of the board; rules and regulations; permits.
53-11-9. Approval of reservoir storage; title to carbon dioxide.
53-11-11. Protection of correlative rights.
53-11-13. Order requiring unit operation of a geologic sequestration facility.
53-11-15. Board order provisions.
53-11-17. Hearings before the board; notice; rules of procedures; emergency; service of process; public records; request for hearings; orders and compliance orders.
53-11-19. Compliance and enforcement.
53-11-21. Effect of acting as storage operator.
53-11-23. Fees; creation of Carbon Dioxide Storage Fund; funding of agency expenses; deposit of monies into State General Fund.
53-11-25. Cessation of storage operations.
53-11-27. Release of performance bond, deposit, or other assurance of performance.
53-11-29. Refusing to monitor or producing false or inaccurate readings.
53-11-31. Appeal to chancery court.
53-11-33. No effect upon enhanced oil or gas recovery operations.

§ 53-11-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Geologic Sequestration of Carbon Dioxide Act."

SOURCES: Laws, 2011, ch. 437, § 1, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-3. Legislative findings; jurisdiction.

(1) It is declared to be in the public interest for a public purpose and the policy of Mississippi that:

(a) The geologic sequestration of carbon dioxide will benefit the citizens of the state and the state's environment.

(b) Carbon dioxide is a valuable commodity to the citizens of the state.

(c) Geologic sequestration of carbon dioxide may allow for orderly withdrawal as appropriate or necessary, thereby allowing carbon dioxide to be available for commercial, industrial, or other uses, including the use of carbon dioxide for enhanced recovery of oil and gas.

(d) The state has substantial and valuable oil and gas reserves not producible by traditional recovery techniques, but which may be producible by enhanced recovery methods.

(e) The enhanced recovery of oil and gas by the injection of carbon dioxide into oil and gas reservoirs is a proven enhanced recovery method which results in additional production of oil and gas in the State of Mississippi and the sequestration of carbon dioxide.

(f) It is for the public benefit and in the public interest that the maximum amount of the state's oil and gas reserves be produced to the extent that it is economically and technologically feasible.

(g) It is for the public benefit and in the public interest that, to the extent that it is economically and technologically feasible, carbon dioxide be injected into and stored in oil and gas reservoirs and other geologic formations in a manner protective of waters of the state as defined in Section 49-17-5(f).

(h) Providing at the election of the operator for a current or former enhanced oil or gas recovery project to qualify as a geologic sequestration project for the incidental storage of carbon dioxide will encourage enhanced oil or gas recovery projects and geologic sequestration projects and will be beneficial to the citizens of this state and will serve the public interest.

(i) Geologic sequestration of carbon dioxide is an emerging industry that has the potential to provide jobs, investment, and other economic opportunities for the people of Mississippi, and is a valuable incentive for Mississippi to attract new industry.

(j) It is the public policy of Mississippi and the purpose of this chapter to provide for a coordinated statewide program related to the geologic sequestration of carbon dioxide in reservoirs defined in this chapter and to also fulfill the state's primary responsibility for assuring compliance with the federal Safe Drinking Water Act, including any amendments thereto related to the underground injection of carbon dioxide for geologic sequestration.

(2) The commission and permit board shall have jurisdiction and authority over all persons and property necessary to enforce effectively the provisions of this chapter relating to the geologic sequestration of carbon dioxide streams and subsequent withdrawal of stored carbon dioxide streams. The department, as staff of the commission and the permit board and on behalf of the State of Mississippi, shall seek primacy from the U.S. Environmental Protection Agency for Class VI underground injection control wells. The commission shall enforce the law pursuant to Section 49-17-1 et seq. Except for Class VI underground injection control wells for which the board shall be the permitting agency: (a) the permit board shall serve as the permitting agency for Class VI underground injection control wells pursuant to Sections 49-17-28 and 49-17-29; and (b) the commission and permit board are authorized to promulgate such rules and regulations as are necessary for the development and administration of the Class VI underground injection control well program consistent with federal statutes, rules and regulations pertaining to geologic sequestration of carbon dioxide streams and assessment of fees for the development and administration of the Class VI underground injection control well program. Underground formations or strata not included in the term "reservoir" as defined in this chapter shall be subject to the jurisdiction of the commission and the permit board. Notwithstanding the foregoing, the board has primacy

for Class II underground injection control wells and, through a written memorandum of understanding with the department, the board will have jurisdiction and authority over Class II underground injection control wells converted to Class VI underground injection control wells and Class VI underground injection control wells within reservoirs as defined in this chapter. All rules, regulations and standards promulgated by the commission, permit board and the board shall be consistent with the requirements of federal statutes, rules and regulations related to Class VI underground injection control wells.

SOURCES: Laws, 2011, ch. 437, § 2, eff from and after passage (approved Mar. 23, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the third sentence of subsection (2) by substituting "Section 49-17-1 et seq." for "Sections 49-17-1, et seq." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — Definitions of terms used in this chapter, see § 53-11-5.

Federal Aspects — Safe Drinking Water Act, see 42 USCS § 300(f) et seq.

§ 53-11-5. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed unless the context clearly indicates otherwise:

(a) "Board" means the State Oil and Gas Board created by Section 53-1-5.

(b) "Carbon dioxide" means: (i) naturally occurring carbon dioxide; (ii) geologically sourced carbon dioxide; (iii) anthropogenic carbon dioxide; or (iv) carbon dioxide stream. The term includes phases of carbon dioxide, whether fluid, liquid or gaseous, stripped, segregated, or divided from any other fluid stream thereof.

(c) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This paragraph (c) does not apply to any carbon dioxide stream that meets the definition of hazardous waste under federal environmental laws and regulations.

(d) "Class VI underground injection control wells" means wells that are not experimental in nature, that are used for geologic sequestration of a carbon dioxide stream, either alone or in combination with injection of carbon dioxide in other forms, and which inject beneath the lowermost formation containing an underground source of drinking water.

(e) "Commission" means the Mississippi Commission on Environmental Quality created by Section 49-2-5.

(f) "Department" means the Mississippi Department of Environmental Quality created by Section 49-2-4.

(g) "Enhanced oil or gas recovery project" means secondary recovery, pressure maintenance, repressuring operations, cycling operations, water flooding operations, injection of carbon dioxide or other gaseous substances or any combination thereof, or any other form of effort calculated to increase the ultimate recovery of oil or gas or both from a reservoir.

(h) "Gas" has the same meaning as provided in Section 53-1-3(d).

(i) "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. For purposes of this chapter, "storage" and "sequestration" have the same meaning. This term does not apply to carbon dioxide capture or transport.

(j) "Geologic sequestration facility" means a facility that receives and contains or sequesters carbon dioxide, or has done so, including:

(i) The reservoir into which carbon dioxide is injected;

(ii) Sequestration wells, monitoring wells, underground equipment, and surface buildings and equipment utilized in geologic sequestration, owned by or under the control of the storage operator; and

(iii) Other property identified by the board or the commission, as applicable, as part of the facility.

The reservoir component of the geologic sequestration facility includes any necessary and reasonable buffer and subsurface monitoring zones designated by the board for the purpose of ensuring the safe and efficient operation of the geologic sequestration facility for the containment or sequestration of carbon dioxide and shall be chosen to protect against escape or migration of carbon dioxide. Nothing in this definition shall prevent orderly withdrawal of the contained carbon dioxide as appropriate or necessary to allow carbon dioxide to be available for enhanced oil or gas recovery projects or other authorized commercial, and industrial uses.

(k) "Oil" has the same meaning as provided in Section 53-1-3(c).

(*l*) "Oil and gas reservoir" shall mean a pool or field as defined in Section 53-1-3(e) and (f).

(m) "Owner," except when used in the phrases "working owner" or "royalty owner," shall have its ordinary, accepted meaning.

(n) "Permit board" means the Mississippi Environmental Permit Board created by Section 49-17-28.

(o) "Person" means any natural person, corporation, association, partnership, limited liability company, or other entity, receiver, executor, administrator, fiduciary or representative of any kind.

(p) "Reservoir" means oil and gas reservoirs and formations above and below oil and gas reservoirs suitable for or capable of being made suitable for the injection and storage of carbon dioxide therein, but only those formations for which the boundaries have been or can be delineated as provided in this chapter.

(q) "Royalty owner" means any person who possesses an interest in production of oil, gas or other commercial minerals, but who is not a "working owner" as defined in this section.

(r) "Safe Drinking Water Act" means the Safe Drinking Water Act, as amended, Title 42, Chapter 6A, Subchapter XII (42 USCS Section 300(f) et seq.).

(s) "Sequestration" means geologic sequestration as used in this chapter and may include the incidental storage of carbon dioxide associated with enhanced oil recovery or gas recovery project operations.

(t) "State" means the State of Mississippi.

(u) "Storage operator" means the person authorized by the board to operate a geologic sequestration facility.

(v) "Underground source of drinking water" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of ground water to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than ten thousand (10,000) milligrams per liter total dissolved solids and is not an exempted aquifer.

(w) "Working owner" means the person who has the right to drill into and produce from any pool of oil, gas or other commercial minerals, and to appropriate the production either for himself or for himself and another or others.

SOURCES: Laws, 2011, ch. 437, § 3, eff from and after passage (approved Mar. 23, 2011.)

Cross References — Definition of the term "unit area," see § 53-11-15.
Definition of "interested person," see § 53-11-31.

§ 53-11-7. Duties and powers of the board; rules and regulations; permits.

(1) The board shall have authority to regulate and promulgate rules and regulations governing geologic sequestration of carbon dioxide and underground injection wells under this chapter within reservoirs. Rules and regulations governing injection wells for geologic sequestration not regulated under the board's authority for Class II wells shall be subject to approval of the commission to be included in a memorandum of understanding between the board and the commission.

(2) The board shall have authority to:

(a) Approve geologic sequestration of carbon dioxide and the operation of a geologic sequestration facility within a reservoir as defined in this chapter.

(b) Regulate the development and operation of geologic sequestration facilities and pipelines within geologic sequestration facilities, provided those pipelines serving such facilities approved hereunder are not otherwise covered under applicable law.

(c) Perform any and all acts necessary to carry out the purposes and requirements of the federal Safe Drinking Water Act, as amended, with respect to the sequestration of carbon dioxide within reservoirs.

(d) Approve conversion of an existing enhanced oil or gas recovery operation into a geologic sequestration facility and continuing of the authority and prior approvals of the board regarding unit operations.

(e) Approve use of carbon dioxide for enhanced oil or gas recovery and for simultaneous geologic sequestration within a reservoir.

(f) Establish requirements for reasonable performance bonds, deposits, or other assurances of performance consistent with federal statutes, rules and regulations connected with Class VI underground injection control wells to be posted as a condition to or requirement for approving an application by the storage operator, and requirements for the sufficiency and character of the surety and guarantors of performance bonds, deposits, or other assurances of performance and reasonable conditions under which the bonds or deposits shall be released.

(g) Make, after notice and hearings as provided in Sections 53-1-19 through 53-1-37, any reasonable rules, regulations and orders that are necessary from time to time in the proper administration and enforcement of this chapter. To that end, the board is authorized and empowered to adopt, modify, repeal and enforce procedural, interpretive and administrative rules in accordance with the provisions of this chapter.

(3) Only a storage operator shall be held or deemed responsible for the performance of any actions required by the board under this chapter.

(4) The board shall issue such orders, rules and regulations as may be necessary for the purpose of protecting any reservoir, strata, or formation against the escape of carbon dioxide therefrom, including any necessary rules and regulations as may pertain to the drilling into or through a geologic sequestration reservoir within the board's jurisdiction.

SOURCES: Laws, 2011, ch. 437, § 4, eff from and after passage (approved Mar. 23, 2011.)

Federal Aspects — Safe Drinking Water Act, see 42 USCS § 300(f) et seq.

§ 53-11-9. Approval of reservoir storage; title to carbon dioxide.

(1) The board may enter an order, after notice and hearing pursuant to the provisions of Sections 53-1-19 through 53-1-37, approving any proposed geologic sequestration of carbon dioxide. The board shall be authorized to issue an order upon finding the following:

(a) That the reservoir sought to be used as a reservoir for the injection, storage and withdrawal of carbon dioxide is suitable and feasible for such use and in the public interest;

(b) That a majority interest, as provided in this chapter, have consented to such use in writing;

(c) That there is no reasonable risk that the use of the reservoir for the storage of carbon dioxide will injure or endanger other formations containing fresh water, oil, gas or other commercial mineral deposits;

(d) That there is no reasonable risk that the proposed storage will endanger human lives or cause a hazardous condition to property; and

(e) In the case of a reservoir that may contain oil, gas or other commercial minerals, that either:

(i) The reservoir has been substantially depleted of all volumes of reservoir oil, gas or other commercial minerals and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied; or

(ii) The reservoir has a greater value or utility as a reservoir for carbon dioxide storage than for the production of the remaining volumes of reservoir oil, gas, condensate or other commercial mineral, if any, and the requirements of Sections 53-11-11 and 53-11-13 have been satisfied. Approval of a geologic sequestration facility by the board shall provide full and complete authority for the construction, equipping and operation of the geologic sequestration facility without need of further action or grant by any person.

(2) Neither injection nor an order of the board shall affect ownership of the carbon dioxide or inhibit the voluntary conveyance of title to the carbon dioxide by the owner. The board may issue any necessary order to protect the title of an owner to carbon dioxide injected into a geologic sequestration facility. The carbon dioxide shall not be subject to the right of any person other than the owner of the carbon dioxide to produce, take, reduce to possession, or otherwise interfere with or exercise any control thereover. The owner of the carbon dioxide shall have no right to gas, liquid hydrocarbons, salt or other commercial minerals in any stratum or portion thereof not determined by the board to constitute an approved sequestration reservoir which are not otherwise owned or leased by the owner.

SOURCES: Laws, 2011, ch. 437, § 5, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-11. Protection of correlative rights.

(1) Upon application by an operator to unitize for a geologic sequestration facility in an oil or gas reservoir that is not unitized either under this chapter or by board order under the provisions of Sections 53-3-103 or 53-3-155, after notice as provided in Section 53-3-115, the board shall hold a hearing to consider the operation of the reservoir for the storage of carbon dioxide to determine whether the predominant result of the injection operations will be the storage of carbon dioxide or will result in an increase in the ultimate recovery of oil or gas, or both, from the proposed geologic sequestration facility. After the hearing the board may:

(a) Determine from the evidence that the reservoir has more value as a geologic sequestration facility than as an enhanced oil or gas recovery project, and as a result, the board shall enter an order for the operation of the unit as a geologic sequestration facility upon making the additional findings set forth in Section 53-11-13.

(b) Determine from the evidence that the predominant result of the injection operations will be an increase in the ultimate recovery of oil or gas or both, and as a result, the board shall not approve the application for a geologic sequestration facility. However, this shall not prevent the board, upon application of the operator, from approving operation of an existing enhanced oil or gas recovery project simultaneously as a geologic sequestration project, recognizing the incidental storage of carbon dioxide under the provisions set forth in Section 53-11-15(1)(d).

(2) Upon application by an operator to unitize for a geologic sequestration facility in any other nonoil, nongas or noncommercial mineral-bearing reservoir that needs to be unitized, after notice as provided, the board shall hold a hearing to consider the evidence, and shall enter an order for the operation of the reservoir as a geologic sequestration facility upon making the findings set forth in Sections 53-11-9(1) and 53-11-13.

(3) An order requiring unit operations of a geologic sequestration facility shall be effective only when the unit for the geologic sequestration facility and the agreements incorporating the pertinent provisions of Section 53-11-15 have been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area, and, if separately owned, a majority interest of all rights of the subsurface reservoir, on the basis of and in proportion to the surface acreage content of the unit area, and the board has made a finding to that effect, either in the order or in a supplemental order.

(4) If the board finds under Section 53-11-9(1)(e) that a reservoir has been substantially depleted of commercially recoverable quantities of oil or gas or other commercial minerals or that the reservoir has greater utility as a reservoir for carbon dioxide storage and that the remaining conditions of Section 53-11-9(1) have been satisfied; or if the board finds that a nonoil, nongas or noncommercial mineral-bearing reservoir satisfies the conditions of Section 53-11-9(1)(a) through (d) and all other conditions the board shall require have been satisfied, the board shall issue an order approving the reservoir for the injection and storage of carbon dioxide in connection with operation of a geologic sequestration facility. An order approving any geologic sequestration facility shall be effective only when the storage rights agreement has been signed, ratified, adopted or approved in writing by a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area under the terms of the order; and, if separately owned, a majority interest of all rights in the underground reservoir, on the basis of, and in proportion to, the surface acreage content of the unit area. If oil, gas or commercial minerals are expected to be produced and sold or used in connection with the geologic sequestration facility in a depleted oil, gas or commercial mineral-bearing reservoir, or such a reservoir that has greater utility as a geologic sequestration facility, then a majority interest of all working owners of such oil, gas or commercial minerals, on the basis of, and in proportion to, the surface acreage content of the unit area under the terms of the order, must also consent to the allocation of the production in writing before an order approving the geologic sequestration facility shall be effective.

(5) In the event the required percentages set forth in this section have not signed, ratified or approved the respective agreements within twelve (12) months from and after the date of the order, the order requiring unit operation shall be automatically revoked.

SOURCES: Laws, 2011, ch. 437, § 6, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-13. Order requiring unit operation of a geologic sequestration facility.

If the board finds pursuant to Section 53-11-9(1) that a reservoir shall be operated as a unit for a geologic sequestration facility, the board may issue an order requiring such unit operation, if it finds that:

(a) Unit operation of the reservoir is reasonably necessary in order to create and operate an approved geologic sequestration facility in the reservoir;

(b) The unit for the geologic sequestration facility and the agreements effectuating the unit are fair and reasonable under all of the circumstances and protect the rights of all interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir;

(c) The correlative rights of all owners of interests in the oil, gas or other commercial minerals where applicable, and the owners of interests in the surface acreage of the unit area, and owners of interests in the carbon dioxide injected or to be injected in the reservoir will be protected;

(d) The cost incident to conducting the geologic sequestration operation will not be borne by the royalty owners of the oil, gas or other commercial minerals except for post-production treating, processing, transportation, and marketing expenses when concurrent production occurs with the geologic sequestration operation; and

(e) The storage operator or a predecessor operator of a proposed sequestration facility has demonstrated the boundaries of the unit as may be necessary for the board to approve the unit by the drilling of wells to sufficient depths and locations, or by other geological or engineering interpretations which may include those from logging, coring, modeling or monitoring.

SOURCES: Laws, 2011, ch. 437, § 7, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-15. Board order provisions.

(1) The order issued by the State Oil and Gas Board shall be fair and reasonable under all of the circumstances and shall protect the rights of interested parties and shall include:

(a) A description of the geographical area and a description of the reservoirs or of any portion or portions or combinations thereof affected which together constitute and are herein termed the "unit area" of the geologic storage facility.

(b) A statement of the nature of the operations contemplated.

(c) A provision for: (i) access to and use of a reasonable amount of the surface area within the unit area by the storage operator and his agents in connection with constructing, equipping, operating, maintaining and terminating operations of the geologic sequestration facility; and (ii) payment of the reasonable costs of compensable damages to the surface and reasonable consideration for use of the surface area.

(d) If oil or gas or both are expected to be produced in connection with operating a unit area as a geologic sequestration facility and the reservoir is being operated under a board order obtained pursuant to the requirements of Section 53-3-101 et seq., the geologic sequestration facility may be operated under the existing plan of unitization approved by the owners therein provided that the unit operator: (i) provides a method approved by the board for winding down oil and gas operations for the transition to a carbon dioxide injection only operation; and (ii) obtains the approval of a majority interest of the surface interest, on the basis of, and in proportion to, the surface acreage content of the unit area, prior to the termination of oil and gas production.

(e) If oil or gas or both are expected to be produced in connection with operating the geologic sequestration facility and the reservoir has not formerly been unitized by board order under Section 53-3-101 et seq., the order shall include:

(i) A formula for the allocation among the separately owned tracts in the geologic sequestration unit area of all the oil or gas, or both, produced and saved from the geologic sequestration unit area, and not required in the conduct of such operation, which formula must expressly be found reasonably to permit persons otherwise entitled to share in or benefit by the production from the separately owned tracts to receive, in lieu thereof, their fair, equitable and reasonable share of the unit production. A separately owned tract's fair, equitable and reasonable share of the unit production shall be that proportionate part of unit production that the contributing value of the tract for oil and gas purposes in the geologic sequestration unit area and its contributing value to the unit bears to the total of all like values of all tracts in the unit, taking into account all pertinent engineering, geological and operating factors that are reasonably susceptible of determination.

(ii) A provision for adjustment among the owners of the geologic sequestration unit area, not including royalty owners, of their respective investment in wells, tanks, pumps, machinery, materials, equipment and other things and services of value attributable to the unit operations. The amount to be charged to unit operations for any such item shall be determined by a majority of the owners of the geologic sequestration unit area and a majority of the working owners of the oil and/or gas interests in the geologic sequestration unit area, not including royalty owners, but if the owners of the geologic sequestration unit area and working owners of the oil or gas, or both oil and gas interests, not including royalty owners, are unable to agree upon the amount of the charges, or to agree upon the correctness thereof, the board shall determine the charges after due notice and hearing upon the application of any interested party. The amount charged against the owner of a separately owned tract shall be considered an expense of unit operation chargeable against the tract. The adjustments provided for in this subparagraph (ii) may be treated separately and handled by agreements separate from the unitization agreement.

(iii) A provision that the costs and expenses of unit operations dedicated to producing oil and gas, including investment past and prospective, shall be borne by the working owners of each tract, who in the absence of unit operation would be responsible for the expenses of developing and operating the oil and gas pools or reservoirs, in the same proportion that the tracts share in unit production. Each working owner's interest in the oil or gas or both expected to be produced in connection with operating the geologic sequestration unit area shall be responsible for the working owner's proportionate share thereof, and the unit operator shall have a lien thereon to secure payment of the working owner's share together with interest at the legal rate. A transfer or conversion of any working owner's interest or any portion thereof, however accomplished after the effective date of the order creating the unit, shall not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations, past or prospective.

(iv) The designation of, or a provision for the selection of a successor to, the storage operator.

(v) A provision that the conduct of all unit operations by the storage operator and the selection of a successor to the storage operator shall be governed by the terms and provisions of the geologic sequestration facility agreements.

(vi) A determination of, or a provision for determining, the time the oil and gas unit operation is to become effective.

(vii) A determination of, or a provision for determining, the manner in which, and the circumstances under which, the unit oil and gas operation shall terminate and the geologic sequestration facility will no longer be considered productive of oil and gas or other commercial minerals and the geologic sequestration facility will be operated solely for the injection of carbon dioxide.

(viii) A requirement that all oil or gas, or both oil and gas, contained in a unit area shall be produced and sold as rapidly as possible without decreasing the ultimate recovery of oil or gas, or both, or causing damage to the reservoir.

(2) If oil or gas, or both, are being produced as an enhanced recovery project operating under a board order obtained pursuant to the requirements

of Section 53-3-101 et seq., utilizing the injection of carbon dioxide for enhanced oil or gas recovery, the board, upon application by the unit operator, may make an order recognizing the incidental sequestration of carbon dioxide that is occurring during its enhanced oil or gas recovery project without requiring the project to qualify as a geologic sequestration facility or otherwise be subject to the provisions of this chapter.

SOURCES: Laws, 2011, ch. 437, § 8, eff from and after passage (approved Mar. 23, 2011.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory language of (1)(e) by substituting "Section 53-3-101 et seq." for "Section 53-3-101 et seq." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Cross References — State Oil and Gas Board generally, see § 53-1-1 et seq.

§ 53-11-17. Hearings before the board; notice; rules of procedures; emergency; service of process; public records; request for hearings; orders and compliance orders.

All public hearings before the board under this chapter shall be conducted pursuant to the provisions of Sections 53-1-19 through 53-1-37.

SOURCES: Laws, 2011, ch. 437, § 9, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-19. Compliance and enforcement.

(1) Whenever the board or an authorized representative of the board determines that a violation of any requirement of this chapter has occurred or is threatened, the board shall be authorized to either issue an order requiring compliance within a specified time period or commence a civil action for appropriate relief, including a temporary or permanent injunction.

(2) Any compliance order issued by the board under this chapter shall state with reasonable specificity the nature of the violation and specify a time for compliance and, in the event of noncompliance, assess a civil penalty, if any, which the board determines is reasonable of not more than Five Thousand Dollars ($5,000.00) a day for each day of violation and for each act of violation, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(3) Except as otherwise provided by law, any person to whom a compliance order is issued and who fails to take corrective action within the time specified in the order or any person found by the board to be in violation of any requirement of this section may be liable for a civil penalty, to be assessed by the board or court, of not more than Five Thousand Dollars ($5,000.00) per day for each day of violation and for each act of violation. In order to enforce the provisions of this section, the board may suspend or revoke any permit, compliance order, license, or variance that has been issued to a person in

accordance with law. No penalty shall be assessed by the board until the person charged has been given notice and an opportunity for a hearing on the charge. In determining whether a civil penalty is to be assessed and in determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

(4) The board, or Attorney General if requested by the board, shall have charge of and shall prosecute all civil cases arising out of violation of any provision of this section including the recovery of penalties.

(5) Except as otherwise provided by law, the board may settle or resolve as the board may deem advantageous to the state any suits, disputes or claims within the jurisdiction of the board for any penalty under any provisions of this section or the regulations or permit license terms and conditions applicable thereto.

SOURCES: Laws, 2011, ch. 437, § 10, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-21. Effect of acting as storage operator.

Any provision in this chapter, or in any rule, regulation or order issued by the board under this chapter to the contrary notwithstanding, acting as a storage operator pursuant to this chapter in compliance with the provisions of this chapter, or with rules, regulations or orders issued by the board under this chapter, or voluntarily performing any act or acts which could be required by the board pursuant to this chapter, or rules, regulations or orders issued by the board under this chapter, shall not:

(a) Cause any storage operator or transporter of carbon dioxide for storage to become, or be classified as, a common carrier or a public utility for any purpose whatsoever.

(b) Subject the storage operator or carbon dioxide transporter to any duties, obligations or liabilities as a common carrier or public utility, under the Constitution and laws of this state.

SOURCES: Laws, 2011, ch. 437, § 11, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-23. Fees; creation of Carbon Dioxide Storage Fund; funding of agency expenses; deposit of monies into State General Fund.

(1)(a) The board is authorized to adopt regulations within its jurisdiction to assess sequestration fees that shall be subject to the approval of the Legislature.

(b) Any monies collected shall be used exclusively: (i) to pay the expenses and other costs connected with administration and enforcement of this chapter and the rules, regulations and orders of the board pursuant to this chapter; and (ii) to fund the Carbon Dioxide Storage Fund established in this chapter.

(c) Any per-ton fee shall first be applied to the administration and enforcement costs of the board's activities required or authorized by this chapter, and any amount exceeding those costs shall be transferred to a separate special fund of the State Oil and Gas Board which is hereby created and is to be known as the Carbon Dioxide Storage Fund.

(d) Transfers to the Carbon Dioxide Storage Fund from the per-ton fees shall be made monthly. Transfers from excess funds collected under subsection (1)(c) of this section may be made at any time in the fiscal year that the board shall determine appropriate. At the beginning of the following fiscal year after the transfer of the excess funds, the rate or rates to be collected under subsection (1)(c) of this section shall be reduced to reflect the excess from the prior year.

(e) When the balance in the Carbon Dioxide Storage Fund reaches or exceeds Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the board shall abate the per-ton fee, and may adjust the annual regulatory fee as prescribed herein. The abatement shall be effective at the beginning of the ensuing fiscal year. When the Carbon Dioxide Storage Fund is reduced below Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility, the per-ton fee shall again be imposed on all geologic storage operators until such time as the fund shall reach or exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) per geologic sequestration facility. The imposition of the per-ton fee shall be effective at the beginning of the ensuing fiscal year.

(f) Monies in the Carbon Dioxide Storage Fund created in this chapter may be used in the board's discretion but only if inadequate funds are available from responsible parties including the financial assurance funds provided in Section 53-11-27(2). Monies in the Carbon Dioxide Storage Fund shall only be used for oversight of geologic storage facilities after cessation of injection at the facility and release of the facility's performance bond or other assurance of performance and as shall be necessary or appropriate to satisfy the requirements of the federal Safe Drinking Water Act, including, without limitation, matters with respect to closed facilities such as: (i) inspecting, testing and monitoring of the facility, including remaining surface facilities and wells; (ii) repairing mechanical problems associated with remaining wells and surface infrastructure; and (iii) repairing mechanical leaks at the facility.

(g) The Carbon Dioxide Storage Fund shall be used for the purposes set forth in this chapter and for no other governmental purposes, nor shall any portion of the fund ever be available to borrow from by any branch of government, it being the intent of the Legislature that this fund and its increments shall remain intact and inviolate. Any interest earned on monies in this fund shall remain in this fund and shall not lapse into the General Fund.

(2) To facilitate the proper administration of the Class VI underground injection control program within its jurisdiction, the commission is authorized

to assess and collect fees from Class VI permit applicants for Class VI underground injection control wells permitted by the permit board. The commission is further authorized to promulgate rules and regulations for the assessment and collection of permit fees for Class VI underground injection control wells within its jurisdiction.

(3) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SOURCES: Laws, 2011, ch. 437, § 12; Laws, 2016, ch. 459, § 38, eff from and after July 1, 2016.

Editor's Note — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment added (3) and (4).

Cross References — State Oil and Gas Board generally, see § 53-1-1 et seq.

Prohibition against one state agency charging another state agencies fees, etc., for services or resources received, see § 27-104-35.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-37.

Federal Aspects — Safe Drinking Water Act, see 42 USCS § 300(f) et seq.

§ 53-11-25. Cessation of storage operations.

(1) After cessation of injection into a geologic sequestration facility and upon application by the storage operator, the board shall be authorized to issue a certificate of completion of injection operations upon a showing by the storage operator that the reservoir is reasonably expected to retain mechanical integrity, and that carbon dioxide will reasonably remain emplaced.

(2) Nothing in this chapter shall establish or create any liability or responsibility on the part of the board or the state to pay any costs associated with facility restoration from any source other than the performance bond, deposit, other assurance of performance, or financial assurances posted or required pursuant to this chapter, nor shall the board or the state have any liability or responsibility to make any payments for costs associated with facility restoration.

(3) The board or its agents, on proper identification, may enter the land of another for purposes of facility assessment or restoration.

(4) The board and its agents are not liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this chapter.

(5) No party contracting with the state or any of its political subdivisions under the provisions of this chapter shall be deemed to be a public employee or agent of the State of Mississippi or any of its political subdivisions.

SOURCES: Laws, 2011, ch. 437, § 13, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-27. Release of performance bond, deposit, or other assurance of performance.

(1) The storage operator may file an application with the board for the release of the performance bond, deposit or other assurance of performance on or after the third anniversary of the date the board issued a certificate of completion for the geologic sequestration facility. An application for a release shall require a description of the status of the carbon dioxide plume development or migration compared to models previously provided to the board, and any other information the board may reasonably require in accordance with this chapter. The board shall give notice of the pending release application by publication as provided in Section 53-3-115.

(2) Before the board's release of all or any portion of a storage operator's performance bond, deposit or other assurance of performance, the board shall require that the storage operator satisfy, in the reasonable determination of the board, the financial assurance requirements of the federal Safe Drinking Water Act and regulations promulgated thereunder. If the financial assurance has as any component a trust or standby trust, the board and the state shall be named as trust beneficiaries. The trust situs shall be located in the state, and at least one (1) trustee shall be a legal resident of the state.

(3) The board may release, in whole or in part, the performance bond, deposit or other assurance of performance if it is satisfied that plume migration has stabilized or is developing in the manner anticipated in models previously filed with the board and the geologic sequestration facility has met all necessary mechanical integrity requirements.

(4) When the storage operator has successfully completed any necessary remedial actions required by the board, but not more than two (2) years beyond the date of the board's initial, partial release of the performance bond, deposit or other assurance of performance, the board shall release the remaining portion of the performance bond, deposit or other assurance of performance. However, no performance bond, deposit or other assurance of performance shall be fully released until all requirements of this chapter are fully met.

(5) If the board denies the application for release of the performance bond, deposit or other assurance of performance or portion thereof, it shall notify the storage operator, in writing, stating the reasons for denial and recommending corrective actions necessary to secure the release.

(6) Full release by the board of the performance bond, deposit or other assurance of performance of the storage operator or any other party holding title to the stored carbon dioxide, shall not affect, either to enlarge or diminish in any way, any legal obligations of the owner of the carbon dioxide or an owner or operator of any carbon dioxide sequestration facility resulting from the actions authorized pursuant to this chapter.

(7) Substantial compliance with this chapter shall in no way be construed to be an absolute defense to civil liability.

SOURCES: Laws, 2011, ch. 437, § 14, eff from and after passage (approved Mar. 23, 2011.)

Federal Aspects — Safe Drinking Water Act, see 42 USCS § 300(f) et seq.

§ 53-11-29. Refusing to monitor or producing false or inaccurate readings.

It shall be a violation of this chapter for any person to refuse to attach or install a monitor within a reasonable period of time when ordered to do so by the board, or in any way to tamper with the monitors so as to produce a false or inaccurate reading.

SOURCES: Laws, 2011, ch. 437, § 15, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-31. Appeal to chancery court.

Any interested person adversely affected by any provision or section of this chapter within the jurisdiction of the board or by any rule, regulation or order made by the board thereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county in which the land involved, or any part thereof, is situated. The term "interested person" shall be interpreted broadly and liberally and shall include all mineral and royalty owners, mineral lessees, if any, and the owners of surface on which injection or re-injection wells and other surface equipment connected with a geologic sequestration facility is or will be situated. Any interested party may appeal to the chancery court of the county in which the land involved or any part thereof is situated, if appeal is demanded within thirty (30) days from the date that the rule, regulation or order of the board is filed for record in the office of the board.

The appeal may be taken by filing notice of the appeal with the board, whereupon the board shall, under its certificate, transmit to the court appealed to all documents and papers on file in the matter, together with a transcript of the record, which documents and papers together with said transcript of the record shall be transmitted to the clerk of the chancery court of the county to which the appeal is taken.

Except as otherwise provided in this section, the appeal otherwise shall be made in accordance with the provisions of Sections 53-1-39 and 53-1-41.

SOURCES: Laws, 2011, ch. 437, § 16, eff from and after passage (approved Mar. 23, 2011.)

§ 53-11-33. No effect upon enhanced oil or gas recovery operations.

Notwithstanding anything to the contrary in this chapter, nothing in this chapter shall prevent an enhanced oil or gas recovery project utilizing injection of carbon dioxide as approved by the board under Section 53-1-17 or require compliance with all or part of this chapter by any enhanced oil or gas recovery project that is not a geologic sequestration facility. An operator of an enhanced oil or gas recovery project utilizing injection of carbon dioxide may request that the board approve such a project as a geologic sequestration facility under this chapter or that the board determine that injection activities constitute the sequestration of carbon dioxide, but nothing in this chapter shall require that such a request be made. No provision of this chapter shall affect or govern any aspect of an enhanced oil or gas recovery project utilizing injection of carbon dioxide unless and until the operator of such project has requested that a particular project be approved by the board as a geologic sequestration facility and the board has granted that request.

SOURCES: Laws, 2011, ch. 437, § 17, eff from and after passage (approved Mar. 23, 2011.)

Index

A

ABANDONED MINE RECLAMATION, §§53-9-101 to 53-9-123.
Acquisition of land by commission, §53-9-109.
  Review of action, §53-9-111.
Authority and powers of commission generally, §53-9-121.
  Land affected by other than coal mining practices, §53-9-123.
Compliance with federal law, §53-9-105.
Cooperation of other agencies, §53-9-117.
Expenditures from account.
  Eligibility, §53-9-103.
  Lands affected by other than coal mining practices, §53-9-123.
  Priorities, §53-9-101.
Financial statements and appraisals, §53-9-113.
Hazard abatement at request of governor, §53-9-115.
Implementation and administration of program, §53-9-121.
Injunction against interference with reclamation, §53-9-119.
Property adversely affected by other than coal mining practices.
  Authority of commission, §53-9-123.
Property adversely affected by past coal mining.
  Acquisition by state, §53-9-109.
    Review upon request of landowner, §53-9-111.
  Right of entry, §53-9-107.
Purpose of expenditures, §53-9-101.
Request for federal grant support, §53-9-105.

ABANDONMENT.
Mine lands.
  Reclamation, §§53-9-101 to 53-9-123.
Mine lines.
  Reclamation, §§53-9-101 to 53-9-123.

ACCOUNTS AND ACCOUNTING.
Storm water management districts.
  Financial reports.
    Filing requirements, §51-39-39.

ACTIONS.
Carbon dioxide.
  Geologic sequestration.
    Violations, §53-11-19.
Geologic sequestration of carbon dioxide.
  Violations, §53-11-19.
Public water authorities.
  Bond issues, §51-41-25.
Surface coal mining and reclamation.
  Compelling compliance with provisions, §53-9-67.
  Release of bond, §53-9-65.
  Violations of provisions, §53-9-69.
Surface mining and reclamation.
  Enforcement actions, §53-7-59.

ALL-TERRAIN VEHICLES.
Public waterways.
  Operation of certain conveyances on public waterways prohibited, §51-1-4.

ANNEXATION.
Joint water management districts.
  Adjacent areas, §51-8-53.

APPEALS.
Carbon dioxide.
  Geologic sequestration.
    Persons adversely affected, §53-11-31.
Drainage districts.
  Dissolution of district by cumulative method, §51-33-119.
  Drainage districts with local commissioners.
    Manner of appeal, §51-29-117.
    Right of use during appeal, §51-29-43.
  Order establishing district, appeal by property owner, §51-29-13.
Geologic sequestration of carbon dioxide.
  Persons adversely affected, §53-11-31.
Joint water management districts.
  Local government findings, §51-8-17.
Oil and gas board.
  Chancery court appeals, §53-1-39.
  Supreme court appeals, §53-1-45.

APPEALS —Cont'd
Oil and gas board —Cont'd
  Unitization of oil and gas fields and pools.
    Chancery court review of board order, §53-3-119.
Pat Harrison waterway district.
  Creation of district, §51-15-117.
Pearl river valley water supply district.
  Creation of district, §51-9-119.
Storm water management districts.
  Ordinance or resolution, §51-39-15.
Surface coal mining and reclamation, §53-9-77.
  Appeals, defined, §53-9-7.
  Civil penalties, §53-9-55.
  Permits.
    Action on applications, §53-9-39.
Surface mining and reclamation.
  Permits.
    Decision of hearing, §53-7-65.
    Parties adversely affected by proceedings, §53-7-45.
Urban flood and drainage control districts.
  Creation of districts, §51-35-313.
Water management districts.
  Chancery court orders, §51-7-23.
Water resources, §51-3-49.
  Civil penalties, §51-3-55.

APPRAISALS AND APPRAISERS.
Abandoned mine lands reclamation.
  Valuation of reclaimed land, §53-9-113.
Pat Harrison waterway district.
  Leases from district.
    Commercial leases, §51-15-165.

ARREST.
Pearl river valley water supply district reservoir police officers, §51-9-177.
  Exercise of powers, §51-9-175.

ATTORNEY GENERAL.
Oil and gas board.
  Attorney for board, §53-1-11.
  Representation of board in proceedings for collection of penalties, §53-1-47.
Public water authorities.
  Submission of act, §51-41-33.

ATTORNEYS AT LAW.
Drainage districts.
  Drainage districts with county commissioners.
    Employment of counsel, §51-31-19.

ATTORNEYS AT LAW —Cont'd
Drainage districts —Cont'd
  Drainage districts with local commissioners.
    Employment of counsel, §51-29-37.

ATTORNEYS' FEES.
Pearl river basin development district.
  Bond issuance, §51-11-11.
Surface coal mining and reclamation.
  Actions to enjoin violations, §53-9-69.
  Civil actions to compel compliance with provisions, §53-9-67.

ATVS.
Public waterways.
  Operation of certain conveyances on public waterways prohibited, §51-1-4.

AUDITS AND AUDITORS.
Drainage districts.
  Drainage districts with local commissioners.
    Financial statement and audit, §51-29-97.
  Receiverships for certain districts, §51-33-81.

AUTHORITIES.
Tombigbee Valley Authority, §§51-13-1 to 51-13-9.

B

BADGES.
Pearl river valley water supply district reservoir police officers, §51-9-175.

BENCH TRIALS.
Drainage districts with local commissioners.
  Alternate method to acquire land and damage compensation.
    Appraisement by commissioners, §51-29-39.

BIDS AND BIDDING.
Drainage districts with county commissioners.
  Contracts let to lowest bidder, §51-31-71.
Surface mining and reclamation.
  Reclamation work, §53-7-71.
Tombigbee river valley water management district, §51-13-113.

BIG BLACK RIVER BASIN DISTRICT.
Preliminary expenses, §51-17-13.

BOARDS AND COMMISSIONS.
Pat Harrison waterway commission, §§51-15-1 to 51-15-9.
Pearl river industrial commission, §§51-9-1 to 51-9-11.
State oil and gas board, §§53-1-1 to 53-1-77.
Tombigbee Valley Authority, §51-13-1.

BOGUE CHITTO RIVER.
Lincoln county.
- Scenic streams stewardship program.
  - Portions of river flowing through county eligible for nomination, §51-4-21.8.

BOND ISSUES.
Drainage districts.
- Drainage districts with county commissioners.
  - Additional bond issues, §§51-31-111 to 51-31-115.
  - Sale of bonds, §51-31-69.
  - Tax levy to meet bond obligations, §51-31-65.
- Drainage districts with local commissioners, §§51-29-63 to 51-29-67.
  - Bonds as lien on land, §51-29-89.
  - Consolidation of districts not to impair lien of outstanding obligations, §51-29-155.
  - Districts acquiring certain lands to assume obligations, §51-29-127.
  - Maintenance of system, §51-29-79.
  - Pledge of revenues and realty to secure bonds, §51-29-91.
- Refunding bonds, §§51-33-39, 51-33-41.
- Urban flood and drainage control districts, §§51-35-323 to 51-35-339.

Joint water management districts, §§51-8-35 to 51-8-49.
Pat Harrison waterway district, §§51-15-131 to 51-15-145.
- Tax exemption, §51-15-155.

Pearl river basin development district, §§51-11-21 to 51-11-31.
- Attorneys' fees in connection with, §51-11-11.
- Flood control district, §§51-11-63 to 51-11-79.

BOND ISSUES —Cont'd
Pearl river basin development district —Cont'd
- Tax exemption of bond, §51-11-45.

Pearl river valley water supply district, §§51-9-133 to 51-9-147, 51-9-157.
- Metropolitan area water supply, §§51-9-201 to 51-9-225.

Public water authorities, §51-41-21.
- Execution of bonds, §51-41-23.
- Proceeds from issuance of bonds, §51-41-29.
  - Refunding bonds, §51-41-31.
- Refunding bonds, §51-41-31.
- Security for bonds, §51-41-25.
- Tax exemptions, §51-41-27.

Refunding bonds.
- Drainage districts, §§51-33-39, 51-33-41.
- Joint water management districts, §51-8-39.
- Pat Harrison waterway district, §51-15-143.
- Pearl river valley water supply district, §51-9-145.
  - Metropolitan area water supply, §51-9-207.
- Tombigbee river valley water management district, §51-13-137.

Tombigbee river valley water management district, §§51-13-123 to 51-13-139.
- Tax exemption, §51-13-149.

Urban flood and drainage control districts, §§51-35-323 to 51-35-339.
Validation of public bonds.
- Joint water management districts, §51-8-39.
- Pat Harrison waterway district, §51-15-139.
- Pearl river basin development district, §51-11-21.
  - Flood control district, §51-11-75.
- Pearl river valley water supply district, §51-9-141.
  - Metropolitan area water supply, §51-9-209.
- Tombigbee river valley water management district, §51-13-133.
- Urban flood and drainage control districts, §51-35-335.

Water management districts.
- Joint water management districts, §§51-8-35 to 51-8-49.

BOND ISSUES —Cont'd
Water management districts —Cont'd
  Powers of board of commissioners, §51-7-27.

BONDS, SURETY.
Drainage districts.
  Drainage districts with county commissioners.
    Drainage commissioners, §51-31-11.
  Drainage districts with local commissioners.
    Contractors, §51-29-61.
    Engineer, §51-29-19.
    Temporary commissioners, §51-29-5.
    Treasurer, §51-29-53.
  Receivers for certain districts, §51-33-79.
Oil and gas.
  Board.
    Appeals to chancery court, §53-1-39.
  Permits.
    Nonresidents, §53-3-11.
Pat Harrison waterway district.
  Appeals from court orders in creation proceedings, §51-15-117.
  Board of directors.
    Treasurer, §51-15-105.
Pearl river basin development district.
  Board of directors.
    Treasurer, §51-11-5.
  Flood control district.
    Treasurer of board of directors, §51-11-57.
Pearl river valley water supply district.
  Board of directors.
    Treasurer, §51-9-107.
  Reservoir police officers, §51-9-181.
Public water authorities.
  Board of directors, §51-41-13.
  Secretary-treasurer, §51-41-15.
Surface coal mining and reclamation.
  Permit applicants, §53-9-31.
  Release of bond, §53-9-65.
Surface mining and reclamation.
  Forfeiture.
    Continuing right of entry, §53-7-35.
  Performance bonds, §§53-7-27, 53-7-37.
  Permits, §53-7-23.
  Release of bond, §53-7-67.
Swamp land districts.
  Commissioners, §51-33-201.

BONDS, SURETY —Cont'd
Tombigbee river valley water management district.
  Board of directors.
    Treasurer, §51-13-105.
Urban flood and drainage control districts.
  Appeal from order creating district or dismissing petitions, §51-35-313.
  Treasurer, §51-35-317.
Water management districts.
  Board of commissioners, §51-7-13.

BORROWING MONEY.
Drainage districts.
  Drainage districts with local commissioners, §51-29-63.
  Farmers' home administration.
    Borrowing from, §51-33-31.
  Government agencies.
    Borrowing from, §51-33-17.
Urban flood and drainage control districts.
  Bond issues, §§51-35-323 to 51-35-339.
  Preliminary expenses, §51-35-341.
  Short-term borrowing by certain levee districts, §51-35-340.

BRIDGES.
Navigable waters.
  Damages to bridges, §51-1-11.

BUDGETS.
Pat Harrison waterway district.
  Estimated expenditures for support, maintenance and operation of district, §51-15-158.

C

CARBON DIOXIDE.
Geologic sequestration, §§53-11-1 to 53-11-33.

CEASE AND DESIST ORDERS.
Oil and gas board.
  Restrictions on injunctions against board, §53-1-41.
  Violations or threatened violations, §53-1-43.

CHANCERY COURTS.
Appeals.
  Geologic sequestration of carbon dioxide, §53-11-31.
  Oil and gas board, §53-1-39.
    Review of board order, §§53-1-39, 53-3-119.

CHANCERY COURTS —Cont'd
Appeals —Cont'd
  Water management districts, §51-7-23.
    Chancery court orders, §51-7-23.
Carbon dioxide.
  Geologic sequestration.
    Appeals, §53-11-31.
Drainage districts.
  Dissolution of districts.
    Cumulative method generally, §§51-33-105 to 51-33-121.
    Jurisdiction, §§51-33-95, 51-33-103.
  Drainage districts with county commissioners.
    Jurisdiction of suits, §51-31-105.
    Master may hear and determine causes, §51-31-107.
    Taxation of expenses of chancellor and master against district, §51-31-109.
  Drainage districts with local commissioners.
    Expenses of chancellor to be paid by district, §51-29-109.
    Hearing on engineer's report, §51-29-9.
    Special commissioner may hear and determine cases under provisions, §51-29-107.
  Transfer of dissolved districts, §51-33-127.
Geologic sequestration of carbon dioxide.
  Appeals, §53-11-31.
Jurisdiction.
  Drainage districts.
    Dissolution of districts, §§51-33-95, 51-33-103.
Oil and gas board.
  Appeals to chancery court, §53-1-39.
Water management districts.
  Appeals from orders, §51-7-23.
  Approval of plans, §51-7-17.
  Dissolution hearing and order, §51-7-45.
  Hearing by chancellor on organization, §§51-7-17, 51-7-19.

CLERKS OF COURT.
Water resources.
  Adjudication of water rights by court.
    Forwarding of copy of decree, §51-3-47.

COAL.
Reclamation of land.
  Abandoned mine lands reclamation, §§53-9-101 to 53-9-123.

COAL —Cont'd
Reclamation of land —Cont'd
  Surface mining and reclamation.
    Coal mining, §§53-9-1 to 53-9-89.
    Generally, §§53-7-1 to 53-7-77.

COMPRESSED AIR.
Underground storage, §53-3-151.

CONFIDENTIALITY OF INFORMATION.
Surface mining and reclamation.
  Coal mining, §53-9-43.
  Disclosure of confidential information, §53-7-75.
Water resources, §51-3-44.

CONFLICT OF LAWS.
Mines and minerals.
  Interstate mining compact.
    Priority of Mississippi laws, §53-10-3.
Pat Harrison waterway district, §51-15-153.
Pearl river basin development district, §51-11-49.
Tombigbee river valley water management district, §51-13-147.
Urban flood and drainage control districts, §51-35-349.

CONFLICTS OF INTEREST.
Surface coal mining and reclamation.
  Department employees, §53-9-19.

CONTEMPT.
Oil and gas board.
  Noncompliance with subpoenas of board, §53-1-35.

CONTRACTS.
Drainage districts.
  Bond of contractors.
    Drainage districts with local commissioners, §51-29-61.
  Construction contracts.
    Drainage districts with county commissioners, §51-31-71.
    Drainage districts with local commissioners, §51-29-59.
  Irrigation of farm lands.
    Contract for irrigation fund, §51-33-35.
Joint water management districts.
  Construction contracts, §51-8-51.
Pat Harrison waterway district.
  Powers of district, §51-15-119.

CONTRACTS —Cont'd
Pearl river basin development district.
  Construction contracts, §51-11-15.
  Powers of district, §51-11-13.
Pearl river valley water supply district.
  Construction contracts, §51-9-123.
  Metropolitan area water supply.
    Contracts between district and public agencies, §51-9-201.
    Powers of district, §51-9-193.
  Powers of district, §51-9-121.
Storm water management districts.
  Incorporation agreements, §51-39-17.
    Amendments, §51-39-19.
    Designation of vote of each commissioner, §51-39-21.
Surface mining and reclamation.
  Reclamation work.
    Private contractors, §53-7-71.
Tombigbee river valley water management district.
  Construction contracts, §51-13-113.
  Powers of district, §51-13-111.
Urban flood and drainage control districts.
  Agreements with United States, state or political subdivisions, §51-35-345.
  Construction contracts, §51-35-319.
Yellow creek watershed authority, §51-25-4.

COSTS.
Joint water management districts.
  Creation proceedings, §51-8-15.
Surface coal mining and reclamation.
  Actions to enjoin violations, §53-9-69.
  Civil actions to compel compliance with provisions, §53-9-67.

COUNTIES.
Geological and mineral survey.
  Expenditures by counties, §§53-5-17 to 53-5-21.
Pearl river basin development district.
  Counties which may become members, §51-11-7.
Pearl river region development.
  Donations by certain counties, §51-9-11.
Storm water management districts, §§51-39-1 to 51-39-43.

COVENANTS.
Joint water management district, §§51-8-31, 51-8-37, 51-8-41.

CREEKS.
Navigable waters, §§51-1-1 to 51-1-11.

CRIMES.
Drainage districts.
  Drainage districts with county commissioners.
    Injuring drains, §51-31-101.
  Drainage districts with local commissioners.
    Obstructing or damaging drains, §51-29-99.
    Private landowner preventing contractor from passing over lands, §51-29-101.
Marine litter, §51-2-3.
Navigable waters.
  Operation of certain conveyances on public waterways prohibited, §51-1-4.
Oil and gas board, §53-1-47.
Surface coal mining and reclamation, §§53-9-57, 53-9-61.
  Confidentiality violations, §53-9-43.
Surface mining and reclamation, §53-7-61.
  Confidentiality violations, §53-7-75.
Water resources, §51-3-55.
  Changes in approved diversion, §51-3-45.
  Confidentiality violations, §51-3-44.
Water well drillers, §51-5-17.

CRUDE OIL.
Transportation of crude oil, §§53-3-201, 53-3-203.

D

DAMAGES.
Drainage districts.
  Drainage districts with county commissioners.
    Actual damages to land owners recoverable, §51-31-77.
    Passing railroad with canal, §51-31-91.
  Drainage districts with local commissioners.
    Commissioners not liable for damages, §51-29-69.

DAMAGES —Cont'd
Oil and gas.
  Underground storage of natural gas or compressed air.
    Action for provable damages, §53-3-163.
Surface coal mining and reclamation.
  Confidentiality violations, §53-9-43.
Water management districts.
  Assessment of damages that will accrue to landowner, §51-7-31.
  Liability of commissioners, §51-7-39.

DAMS AND RESERVOIRS.
Authority to construct or modify, §51-3-39.
Pearl river valley supply district.
  Reservoir police officers, §§51-9-171 to 51-9-185.
Safety inspections, §51-3-39.

DEFINED TERMS.
Abandoned mine lands.
  Surface coal mining and reclamation, §53-9-7.
Affected area.
  Surface mining and reclamation, §53-7-5.
Appeal.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Approximate original contour.
  Surface coal mining and reclamation, §53-9-7.
As recorded in the minutes of the permit board.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Barrel of oil.
  Oil and gas board.
    Administration expense tax, §53-1-71.
Beneficial use.
  Water resources, §51-3-3.
Board.
  Public water authorities, §51-41-3.
Bonds.
  Pearl river valley water supply district.
    Metropolitan area water supply, §51-9-191.

DEFINED TERMS —Cont'd
Bonds —Cont'd
  Public water authorities, §51-41-3.
Carbon dioxide.
  Geologic sequestration of carbon dioxide, §53-11-5.
Carbon dioxide stream.
  Geologic sequestration of carbon dioxide, §53-11-5.
Certificate of compliance.
  Oil and gas board, §53-1-3.
Class I materials.
  Surface mining and reclamation, §53-7-5.
Class II materials.
  Surface mining and reclamation, §53-7-5.
Class VI underground injection control wells.
  Geologic sequestration of carbon dioxide, §53-11-5.
Coal.
  Surface coal mining and reclamation, §53-9-7.
Cost of project.
  Storm water management districts, §51-39-5.
County.
  Storm water management districts, §51-39-5.
Cubic foot of gas.
  Oil and gas board.
    Administration expense tax, §53-1-71.
Developed area.
  Oil and gas board, §53-1-3.
Disbursing agent.
  Oil and gas, §53-3-41.
Ditch.
  Drainage districts with local commissioners, §51-29-3.
  Storm water management districts, §51-39-5.
Domestic uses.
  Water resources, §51-3-3.
Drainage district, §51-7-3.
Drainage unit.
  Oil and gas board, §53-1-3.
Drilling unit.
  Oil and gas, §53-1-3.
Enhanced oil or gas recovery project.
  Geologic sequestration of carbon dioxide, §53-11-5.
Established average minimum lake levels.
  Water resources, §51-3-3.

DEFINED TERMS —Cont'd
Established minimum flow.
  Water resources, §51-3-3.
Executive director.
  Surface mining and reclamation, §53-7-5.
Exploration activity.
  Surface mining and reclamation, §53-7-5.
Exploration operations.
  Surface coal mining and reclamation, §53-9-7.
Facilities.
  Storm water management districts, §51-39-5.
Field.
  Oil and gas board, §53-1-3.
First purchaser.
  Oil and gas, §53-3-41.
Formal hearing.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Fund.
  Surface mining and reclamation, §53-7-5.
Gas, §53-1-3.
  Geologic sequestration of carbon dioxide, §53-11-5.
General permit.
  Surface mining and reclamation, §53-7-5.
Geologic sequestration.
  Geologic sequestration of carbon dioxide, §53-11-5.
Geologic sequestration facility.
  Geologic sequestration of carbon dioxide, §53-11-5.
Governing body.
  Storm water management districts, §51-39-5.
Groundwater, §51-3-3.
Highwall.
  Surface mining and reclamation, §53-7-5.
Illegal oil and illegal gas, §53-1-3.
Imminent danger to health and safety of the public.
  Surface coal mining and reclamation, §53-9-7.
Incorporation agreement.
  Storm water management districts, §51-39-5.
Indenture.
  Public water authorities, §51-41-3.

DEFINED TERMS —Cont'd
Informal hearing.
  Surface coal mining and reclamation, §53-9-7.
Interested party.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Interest owner.
  Oil and gas, §53-3-41.
Landowner.
  Water management districts, §51-7-3.
Lignite.
  Surface coal mining and reclamation, §53-9-7.
Master water management district, §51-7-3.
Materials.
  Surface mining and reclamation, §53-7-5.
Member.
  Storm water management districts, §51-39-5.
Mining of aquifer, §51-3-3.
Municipality.
  Storm water management districts, §51-39-5.
Municipal use.
  Water resources, §51-3-3.
Natural gas.
  Underground storage, §53-3-151.
Navigable waters, §51-1-1.
Nearest approximate original contour.
  Surface mining and reclamation, §53-7-5.
Necessary improvements, property or facilities.
  Pearl river basin development district, §51-11-53.
Noncommercial disposal of oil field exploration and production waste, §53-1-3.
Notice of intent.
  Surface mining and reclamation, §53-7-5.
Oil, §53-1-3.
  Geologic sequestration of carbon dioxide, §53-11-5.
Oil and gas production.
  Royalty proceeds, §53-3-41.
Oil and gas reservoir.
  Geologic sequestration of carbon dioxide, §53-11-5.

DEFINED TERMS —Cont'd
Oil field exploration and production wastes, §53-1-3.
Operator.
  Oil and gas, §53-3-41.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Orphan well.
  Oil and gas board, §53-1-3.
Overburden.
  Surface mining and reclamation, §53-7-5.
Owner.
  Geologic sequestration of carbon dioxide, §53-11-5.
  Oil and gas board, §53-1-3.
Permit.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Permit area.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Permit board.
  Geologic sequestration of carbon dioxide, §53-11-5.
  Surface mining and reclamation, §53-7-5.
Permitted use.
  Water resources, §51-3-3.
Permittee.
  Water resources, §51-3-3.
Person.
  Administration expense tax, §53-1-71.
  Geologic sequestration of carbon dioxide, §53-11-5.
  Oil and gas board, §53-1-3.
  Pearl river valley water supply district, §51-9-191.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
  Water resources, §51-3-3.
Pool.
  Oil and gas board, §53-1-3.
Prime farmland.
  Surface coal mining and reclamation, §53-9-7.
Producer.
  Oil and gas board, §53-1-3.

DEFINED TERMS —Cont'd
Product.
  Oil and gas board, §53-1-3.
Project.
  Pearl river basin development district, §51-11-53.
  Public water authorities, §51-41-3.
  Reforestation easements, §51-35-25.
  Storm water management districts, §51-39-5.
Project area.
  Pearl river basin development district.
    Flood control district, §51-11-53.
  Reforestation easements, §51-35-25.
Public agency.
  Pearl river valley water supply district.
    Metropolitan area water supply, §51-9-191.
  Storm water management districts, §51-39-5.
Public hearing.
  Surface coal mining and reclamation, §53-9-7.
  Surface mining and reclamation, §53-7-5.
Qualified corporation.
  Public water authorities, §51-41-3.
Qualified person.
  Pearl river valley water supply district reservoir police officers, §51-9-173.
Real property.
  Drainage districts with local commissioners, §51-29-3.
Reclamation.
  Surface mining, §53-7-5.
Reclamation plan.
  Surface coal mining and reclamation, §53-9-7.
Refined hydrocarbons.
  Oil and gas board, §53-1-3.
Reforestation easements.
  Flood control, §51-35-25.
Related facility.
  Pearl river basin development district.
    Flood control district, §51-11-53.
Reservoir.
  Geologic sequestration of carbon dioxide, §53-11-5.
Royalty owner.
  Geologic sequestration of carbon dioxide, §53-11-5.
  Oil and gas liens, §53-3-41.
Safe drinking water act.
  Geologic sequestration of carbon dioxide, §53-11-5.

DEFINED TERMS —Cont'd
Sequestration.
  Geologic sequestration of carbon dioxide, §53-11-5.
Spoil pile.
  Surface mining and reclamation, §53-7-5.
State.
  Geologic sequestration of carbon dioxide, §53-11-5.
  Public water authorities, §51-41-3.
  Storm water management districts, §51-39-5.
State reclamation program.
  Surface coal mining and reclamation, §53-9-7.
Storage operator.
  Geologic sequestration of carbon dioxide, §53-11-5.
Storm water.
  Storm water management districts, §51-39-5.
Storm water management system.
  Storm water management districts, §51-39-5.
Stream.
  State scenic streams stewardship program, §51-4-3.
Surface coal mining and reclamation operations, §53-9-7.
Surface coal mining operations, §53-9-7.
Surface mining, §53-7-5.
Surface mining operation, §53-7-5.
Surface owner.
  Surface coal mining and reclamation, §53-9-83.
Surface water, §51-3-3.
Term.
  Pat Harrison waterway district, commercial leases, §51-15-165.
Topsoil.
  Surface mining and reclamation, §53-7-5.
Toxic material.
  Surface mining and reclamation, §53-7-5.
Underground injection program.
  Oil and gas board, §53-1-3.
Underground source of drinking water.
  Geologic sequestration of carbon dioxide, §53-11-5.
United States.
  Public water authorities, §51-41-3.

DEFINED TERMS —Cont'd
Unit of local government.
  Storm water management districts, §51-39-5.
Unwarranted failure to comply.
  Surface coal mining and reclamation, §53-9-7.
Water authority.
  Public water authorities, §51-41-3.
Watercourse, §51-3-3.
Water management district, §51-7-3.
Water supply system.
  Pearl river valley water supply district.
    Metropolitan area water supply, §51-9-191.
Waterworks.
  Pearl river valley water supply district, §51-9-191.
Working owner.
  Geologic sequestration of carbon dioxide, §53-11-5.

DEPOSITORIES.
Drainage districts.
  Drainage districts with county commissioners, §51-31-17.
Pat Harrison waterway district.
  Funds of district, §51-15-147.
Pearl river basin development district.
  Funds of district, §51-11-39.
Pearl river valley water supply district.
  Funds of district, §51-9-149.
Tombigbee river valley water management district.
  Funds of district, §51-13-141.
Urban flood and drainage control districts.
  Funds of district, §51-35-343.

DISCIPLINARY ACTIONS.
Water well drillers.
  Revocation of permit, §§51-5-9, 51-5-11.

DRAINAGE DISTRICTS, §§51-33-1 to 51-33-127.
Abandoned improvements.
  Drainage districts with local commissioners.
    Costs, §§51-29-23, 51-29-25.
Appeals.
  Dissolution of district by cumulative method, §51-33-119.

DRAINAGE DISTRICTS —Cont'd
Appeals —Cont'd
  Drainage districts with local commissioners.
    Manner of appeal, §51-29-117.
    Right of use during appeal, §51-29-43.
  Order establishing district, appeal by property owner, §51-29-13.
Assessments.
  Drainage districts with county commissioners, §§51-31-45 to 51-31-53.
    Appraisement by commissioners, §§51-31-57, 51-31-59.
    Payment of assessments, §51-31-53.
    Railroads may be assessed for benefits, §51-31-93.
    Reassessment if estimate deficient, §51-31-99.
    Reassessments in case of underestimates, §51-31-67.
    Tax levy to meet assessment, §51-31-63.
  Drainage districts with local commissioners, §§51-29-29 to 51-29-35.
    Additional assessments for maintenance of system, §51-29-79.
    Apportionment of assessment when land lies in certain district, §51-29-121.
    Apportionment of benefits when land divided into smaller units of ownership, §§51-29-111, 51-29-113.
    Appraisement by commissioners as alternate method to acquire land, §§51-29-39, 51-29-41.
    Approved roll is final assessment, §51-29-33.
    Collection of assessments, §51-29-51.
    Court order for assessments to cover cost of improvement, §51-29-45.
    Error in names not to invalidate assessment, §51-29-93.
  Receivers.
    Payment of assessments by landowners, §51-33-83.
  Release of land from lien of assessment, §§51-33-59 to 51-33-73.
Attorneys at law.
  Drainage districts with county commissioners.
    Employment of counsel, §51-31-19.

DRAINAGE DISTRICTS —Cont'd
Attorneys at law —Cont'd
  Drainage districts with local commissioners.
    Employment of counsel, §51-29-37.
Audits.
  Drainage districts with local commissioners.
    Financial statement and audit, §51-29-97.
  Receiverships for certain districts, §51-33-81.
Bond issues.
  Drainage districts with county commissioners.
    Additional bond issues, §§51-31-111 to 51-31-115.
    Sale of bonds, §51-31-69.
    Tax levy to meet bond obligations, §51-31-65.
  Drainage districts with local commissioners, §§51-29-63 to 51-29-67.
    Bonds as lien on land, §51-29-89.
    Consolidation of districts not to impair lien of outstanding obligations, §51-29-155.
    Districts acquiring certain lands to assume obligations, §51-29-127.
    Maintenance of system, §51-29-79.
    Pledge of revenues and realty to secure bonds, §51-29-91.
  Legal indebtedness.
    Funding, §51-33-37.
  Refunding bonds, §§51-33-39, 51-33-41.
  Urban flood and drainage control districts, §§51-35-323 to 51-35-339.
Bonds, surety.
  Drainage districts with county commissioners.
    Drainage commissioners, §51-31-11.
  Drainage districts with local commissioners.
    Contractors, §51-29-61.
    Engineer, §51-29-19.
    Temporary commissioners, §51-29-5.
    Treasurer, §51-29-53.
  Receivers for certain districts, §51-33-79.
Borrowing money.
  Drainage districts with local commissioners, §51-29-63.
  Farmers' home administration.
    Borrowing from, §51-33-31.

DRAINAGE DISTRICTS —Cont'd
Borrowing money —Cont'd
  Government agencies.
    Borrowing from, §51-33-17.
Chancery courts.
  Dissolution of districts.
    Cumulative method generally, §§51-33-105 to 51-33-121.
    Jurisdiction, §§51-33-95, 51-33-103.
  Drainage districts with county commissioners.
    Jurisdiction of suits, §51-31-105.
    Master may hear and determine causes, §51-31-107.
    Taxation of expenses of chancellor and master against district, §51-31-109.
  Drainage districts with local commissioners.
    Expenses of chancellor to be paid by district, §51-29-109.
    Special commissioner may hear and determine cases under provisions, §51-29-107.
Commissioners of consolidated districts.
  Drainage districts with local commissioners, §51-29-151.
    Transfer of powers of former commissioners, §51-29-153.
Compensation of commissioners.
  Drainage districts with county commissioners, §51-31-13.
Compromise and settlement.
  Receiverships for certain districts.
    Compromise of assessments between landowners and bondholders, §51-33-85.
Confirmation of assessments.
  Drainage districts with county commissioners, §51-31-51.
Connections.
  Compensation for connecting with district system.
    Drainage districts with local commissioners, §51-29-75.
  Drainage districts with local commissioners, §§51-29-73 to 51-29-77.
Conservation.
  Additional powers for conservation, §§51-33-1, 51-33-3.
  Creation of district for conservation purposes, §51-33-7.
  Petition for conservation powers, §51-33-5.

DRAINAGE DISTRICTS —Cont'd
Conservation —Cont'd
  Purposes of provision, §51-33-9.
Consolidation of districts.
  Drainage districts with local commissioners, §§51-29-145 to 51-29-157.
Contracts.
  Bond of contractors.
    Drainage districts with local commissioners, §51-29-61.
  Construction contracts.
    Drainage districts with county commissioners, §51-31-71.
    Drainage districts with local commissioners, §51-29-59.
  Irrigation of farm lands.
    Contract for irrigation fund, §51-33-35.
Corps of engineers.
  Cooperative agreements with U.S. corps of engineers, §51-33-29.
Costs.
  Estimation of costs by commissioners.
    Drainage districts with county commissioners, §51-31-33.
County farm.
  Drainage districts with county commissioners.
    Benefit to county farm, §51-31-103.
County tax collectors.
  Drainage districts with local commissioners.
    Duties of tax collector, §51-29-55.
Creation of districts.
  Drainage districts with county commissioners, §§51-31-21 to 51-31-43.
  Drainage districts with local commissioners, §§51-29-5 to 51-29-13.
Cumulative method.
  Dissolution by, §§51-33-105 to 51-33-121.
    Appeals, §51-33-119.
    Claims, examining, determining, §§51-33-111, 51-33-115.
    Generally, §51-33-105.
    Master or commissioner to wind up affairs, appointment, §51-33-113.
    Notice of hearing, §51-33-109.
    Petition, §51-33-107.
    Publication of notice, §51-33-109.
    Sale of property, §51-33-113.

DRAINAGE DISTRICTS —Cont'd
Cumulative method —Cont'd
  Dissolution by —Cont'd
    Summons, §51-33-109.
    Surplus funds, refunding, §51-33-117.
Damages.
  Drainage districts with county commissioners.
    Actual damages to land owners recoverable, §51-31-77.
    Passing railroad with canal, §51-31-91.
  Drainage districts with local commissioners.
    Commissioners not liable for damages, §51-29-69.
Declaration of organization.
  Drainage districts with county commissioners, §51-31-41.
Definitions.
  Drainage districts with county commissioners, §51-31-3.
  Drainage districts with local commissioner, §51-29-3.
Depositories.
  Drainage districts with county commissioners, §51-31-17.
Dissolution.
  Cumulative method, §§51-33-105 to 51-33-121.
  District with construction not requiring maintenance, §§51-33-99 to 51-33-103.
  District without construction, §§51-33-91 to 51-33-97.
Ditches.
  Compensation for connecting with district system.
    Drainage districts with local commissioners, §51-29-75.
  Construction of ditches outside of district, §51-29-77.
  Drainage districts with county commissioners.
    Lateral ditches to be laid out, §51-31-75.
    Use of ditches already constructed, §51-31-85.
  Drainage districts with local commissioners.
    Connections generally, §§51-29-73 to 51-29-77.
    Ditches may cross highways and railroads, §51-29-95.

DRAINAGE DISTRICTS —Cont'd
Diversion of waters.
  Drainage districts with local commissioners.
    Provisions not construed to permit enlargement of proscriptive rights, §51-29-129.
Drainage districts with county commissioners, §§51-31-1 to 51-31-143.
  Commissioners, §§51-31-7 to 51-31-15.
  Compensation of commissioners, §51-31-13.
  Construction of provisions, §51-31-143.
  Districts coming under provisions.
    Procedure, §51-31-141.
  Selection of commissioners, §51-31-9.
  Supervisors.
    Placing districts under, §51-31-139.
Drainage districts with local commissioners, §§51-29-1 to 51-29-165.
  Commissioners, §§51-29-15 to 51-29-19.
    Appointment, §51-29-15.
    Compensation, §51-29-17.
    Powers and duties, §51-29-19.
    Quorum, §51-29-15.
    Removal, §51-29-15.
    Terms of office, §51-29-17.
    Vacancies, §51-29-15.
  Construction of provisions, §51-29-105.
  Districts coming under provisions.
    Procedure, §51-29-103.
  Scope of provisions, §51-29-1.
Drains.
  Drainage districts with county commissioners.
    Commissioners to construct and maintain drains, §51-31-73.
    Compensation for use of other district drains, §51-31-87.
    Drain may cross public road, §51-31-95.
    Penalty for injuring drains, §51-31-101.
    Use of drains by landowners outside of district, §51-31-97.
  Drainage districts with local commissioners.
    Penalty for obstructing or damaging drains, §51-29-99.
Eminent domain.
  Construction of ditches outside of district, §51-29-77.

DRAINAGE DISTRICTS —Cont'd
Eminent domain —Cont'd
  Drainage districts with local commissioners.
    Condemnation proceedings, §51-29-35.
Enlargement of boundaries.
  Drainage districts with local commissioners, §§51-29-131 to 51-29-143.
    Extension may include land of other districts, §51-29-139.
    Provisions applicable to extended districts, §51-29-143.
    Rights and powers of extended district, §51-29-137.
    Separate accounts for extended districts, §51-29-141.
Estimation of costs by commissioners.
  Drainage districts with county commissioners, §51-31-33.
Flood control.
  Federal agreements with drainage districts, §§51-35-1 to 51-35-25.
  Urban flood and drainage control districts, §§51-35-301 to 51-35-351.
Form of court's order.
  Creation of districts.
    Drainage districts with county commissioners, §51-31-39.
Hearings.
  Consolidation of districts.
    Drainage districts with local commissioners, §51-29-149.
  Drainage districts with county commissioners.
    Date of hearing, §51-31-27.
    Landowners may sign at hearing, §51-31-31.
    Objections to assessment roll, §51-31-49.
    Procedure, §51-31-29.
  Drainage districts with local commissioners.
    Reforestation, §51-29-163.
  Repairs and restoration.
    Hearings on indebtedness, §51-33-25.
Highways.
  Drainage districts with county commissioners.
    Drain may cross public road, §51-31-95.

DRAINAGE DISTRICTS —Cont'd
Highways —Cont'd
  Drainage districts with local commissioners.
    Ditches may cross highways, §51-29-95.
Immunities.
  Drainage districts with local commissioners.
    Commissioners not liable for damages, §51-29-69.
Irrigation.
  Farm lands, §§51-33-33, 51-33-35.
Jurisdiction.
  Drainage districts with county commissioners.
    Annual reports, §51-31-81.
    Organization of district, §51-31-23.
    Suits, §51-31-105.
Law, dissolution by, §51-33-121.
Leases, §§51-33-49, 51-33-55.
  Drainage districts with local commissioners.
    Mineral leases, §51-29-159.
  Tax lands, §51-33-49.
    Terms of lease, §51-33-55.
Liens.
  Drainage districts with local commissioners.
    Bonds as lien on land, §51-29-89.
  Release of land from lien of assessment, §§51-33-59 to 51-33-73.
Maintenance of system.
  Drainage districts with local commissioners, §51-29-79.
Mines and minerals.
  Drainage districts with local commissioners.
    Mineral leases, §51-29-159.
Notice.
  Dissolution of districts, §§51-33-93, 51-33-101, 51-33-109.
  Drainage districts with county commissioners.
    Appraisement by commissioners, §51-31-57.
    Assessments, §51-31-47.
    Contracts.
      Advertisement for bids, §51-31-71.
    Hearing on placing of district under supervisors, §51-31-139.
    Issuance of additional bonds, §51-31-115.
    Passing railroad with canal, §51-31-91.

DRAINAGE DISTRICTS —Cont'd
Notice —Cont'd
  Drainage districts with county commissioners —Cont'd
    Petition for creation of district, §51-31-25.
    Subdistrict proceedings, §51-31-121.
    Sufficiency of notices, §51-31-117.
  Drainage districts with local commissioners.
    Additional levy for maintenance of system.
      Filing of application or petition, §51-29-79.
    Consolidation of districts, §51-29-147.
    Enlargement of boundaries, §51-29-133.
  Legal indebtedness.
    Bond issue to fund, §51-33-37.
Objections to assessment roll.
  Hearings.
    Drainage districts with county commissioners, §51-31-49.
Organization of districts in two or more counties.
  Creation of drainage districts with local commissioners, §51-29-7.
Petitions.
  Dissolution of districts, §§51-33-93, 51-33-101, 51-33-107.
  Drainage districts with county commissioners.
    Creation of districts, §§51-31-21, 51-31-25, 51-31-31.
    Date of hearing, §51-31-27.
    Landowners may sign at hearing, §51-31-31.
    Procedure, §51-31-29.
  Drainage districts with local commissioners.
    Consolidation of districts, §51-29-147.
    Creation of district, §51-29-11.
    District coming under provisions, §51-29-103.
    Enlargement of boundaries, §51-29-135.
    Reforestation, §51-29-161.
  Soil and water conservation.
    Additional powers for, §51-33-5.
Planning.
  Drainage districts with local commissioners.
    Alteration of plans, §51-29-71.

DRAINAGE DISTRICTS —Cont'd
Planning —Cont'd
  Drainage districts with local commissioners —Cont'd
    Filing of plans and estimates of commission, §51-29-27.
    Plans for improvement of district, §§51-29-19, 51-29-21.
Powers of districts.
  Drainage districts with county commissioners, §§51-31-1, 51-31-5.
    Exercise of powers, §51-31-7.
  Drainage districts with local commissioners, §51-29-119.
    Consolidated district, §51-29-157.
  Soil and water conservation.
    Additional powers for, §§51-33-1 to 51-33-13.
    Creation of district for conservation purposes, §51-33-7.
  Water management.
    Additional powers for, §§51-33-11 to 51-33-15.
Private lands.
  Drainage districts with local commissioners.
    Contractors may pass over private lands, §51-29-101.
Property taxes.
  Certificates that taxes erroneously collected.
    Drainage districts with local commissioners, §§51-29-83 to 51-29-87.
  Drainage districts with county commissioners.
    Collection of taxes, §51-31-129.
    Delinquent lands, §51-31-131.
    Levies, §§51-31-61 to 51-31-65.
  Drainage districts with local commissioners.
    Certificates that taxes erroneously collected, §§51-29-83 to 51-29-87.
    Collection of taxes, §51-29-81.
    Levy by board of supervisors, §§51-29-47, 51-29-49.
    New tax levy in case of deficiency, §51-29-57.
  Flood control.
    Federal agreements with drainage districts, §§51-35-7, 51-35-13.
  Repair and restoration.
    Payment of certificates of indebtedness issued for, §51-33-23.

DRAINAGE DISTRICTS —Cont'd
Quorum of commissioners needed to bind board, §51-31-15.
Railroads.
- Drainage districts with county commissioners.
  - Assessing railroad for benefits, §51-31-93.
  - Passing railroads with canal, §§51-31-89, 51-31-91.
- Drainage districts with local commissioners.
  - Ditches may cross railroads, §51-29-95.

Receivers, §§51-33-75 to 51-33-89.
- Appointment proceedings, §51-33-77.
- Audit of records, §51-33-81.
- Bond, §51-33-79.
- Compromise of assessments, §51-33-85.
- Discharge of receiver.
  - Payment of assessments by landowners or sale, §51-33-87.
- Disposition of funds.
  - Payment of assessments by landowners or sale, §51-33-87.
- Duties, §51-33-79.
- Management.
  - Receivership as additional management method, §51-33-89.
- Oath, §51-33-79.
- Payment of assessments by landowners or sale, §51-33-83.
  - Discharge of receiver, §51-33-87.
  - Disposition of funds, §51-33-87.
- Records, §51-33-79.
  - Audit of records, §51-33-81.

Records.
- Drainage districts with county commissioners.
  - Tax sales, §51-31-135.
- Receivers for certain districts, §51-33-79.

Reforestation.
- Drainage districts with local commissioners, §§51-29-161 to 51-29-165.
  - Disposition of proceeds, §51-29-165.
  - Hearing on petition, §51-29-163.
  - Procedures, §51-29-161.

Registration of bonds.
- Drainage districts with local commissioners, §51-29-65.

Release of land from lien of assessment.
- Agreement with commissioner and bondholders, §§51-33-65, 51-33-67.

DRAINAGE DISTRICTS —Cont'd
Release of land from lien of assessment —Cont'd
- Districts with more than fifty percent of lands forfeited to state for taxes.
  - Generally, §51-33-69.
  - Payment for release, §51-33-73.
  - Procedure for release, §51-33-71.
- Indebtedness refinanced through reconstruction finance corporation, §§51-33-61, 51-33-63.
- Lump sum payment, §51-33-59.

Repairs and restoration.
- Authority for indebtedness, §51-33-27.
- Certificates of indebtedness for, §§51-33-19 to 51-33-27.
- Funds, §51-33-19.
- Hearings on indebtedness, §51-33-25.
- Negotiable certificates of indebtedness.
  - Funding by sale, §51-33-21.
- Tax levies, §51-33-23.

Right of entry.
- Drainage districts with county commissioners.
  - Commissioners may go on land, §51-31-83.

Rights of way.
- Drainage districts with county commissioners.
  - Agreements, §51-31-55.
- Drainage districts with local commissioners.
  - Acquisition of rights of way through existing districts, §51-29-125.
  - Ownership and disposition of rights of way, §51-29-123.
- Flood control.
  - Acquisition of rights of way in connection with agreements with United States, §51-35-11.

Savings statute, §51-33-123.
Selection of commissioners.
- Drainage districts with county commissioners, §51-31-9.

Soil and water conservation.
- Additional powers for, §§51-33-1 to 51-33-13.
- Cooperative agreements for conservation programs, §51-33-13.
- Creation of district for conservation purposes, §51-33-7.

Subdrainage districts.
- Creation of subdistricts.
  - Drainage districts with county commissioners, §51-31-123.

DRAINAGE DISTRICTS —Cont'd
Subdrainage districts —Cont'd
  Formation.
    Drainage districts with county commissioners, §§51-31-119 to 51-31-127.
    Drainage districts with local commissioners, §51-29-115.
  Managed by drainage commissioners.
    Drainage districts with county commissioners, §51-31-125.
  Separate financial accounting, §51-31-127.
Swamp land districts, §§51-33-201 to 51-33-207.
Tax lands.
  Release of lands in districts with more than fifty percent of lands forfeited to state for taxes.
    Generally, §51-33-69.
    Payment for release, §51-33-73.
    Procedure for release, §51-33-71.
Tax sales, §51-33-49.
  Drainage districts with county commissioners, §§51-31-129 to 51-31-137.
    Delinquent lands, §51-31-131.
    Expiration of redemption period, §51-31-137.
    Record of sales, §51-31-135.
    Tax lists, §51-31-133.
  Drainage districts with local commissioners, §51-29-81.
    Certificates for erroneously collected drainage taxes, §51-29-85.
  Sale price, §51-33-51.
  Seal required for conveyance of tax lands, §51-33-57.
  State sale of tax lands, §51-33-43.
    Purchase by district, §§51-33-45, 51-33-47.
  Terms of sale, §51-33-53.
Treasurers of district.
  Drainage districts with county commissioners.
    Secretary and treasurer, §51-31-17.
  Drainage districts with local commissioners, §51-29-53.
Urban flood and drainage control districts, §§51-35-301 to 51-35-351.
Water management.
  District becoming known as water management district, §51-33-15.

DRINKING WATER.
Water well contractors.
  Licensing and regulation, §§51-5-1 to 51-5-19.

E

EASEMENTS.
Flood control.
  Reforestation easements, §51-35-25.
Water management districts.
  Acquisition by board of commissioners, §51-7-33.

ELECTIONS.
Joint water management districts.
  Bond issues, §51-8-37.
  Creation, §51-8-11.
Pat Harrison waterway district.
  County election on question of inclusion in district, §§51-15-113, 51-15-115.
Pearl river basin development district.
  County participation in district and levy of tax, §51-11-9.
  Flood control district.
    Bond elections, §§51-11-65 to 51-11-69.
    Referendum on creation, §51-11-55.
Pearl river valley water supply district.
  Creation of district, §§51-9-115, 51-9-117.
Tombigbee river valley water management district.
  County election on creation of district and levy of tax, §51-13-107.
Urban flood and drainage control districts.
  Bond elections, §§51-35-325 to 51-35-329.
    Calling election, §51-35-325.
    Procedure, §51-35-327.
    Results, §51-35-329.

EMINENT DOMAIN.
Abandoned mine lands reclamation.
  Property adversely affected by past coal mining.
    Acquisition by state, §53-9-109.
      Review upon request of landowner, §53-9-111.
Drainage districts.
  Construction of ditches outside of district, §51-29-77.

EMINENT DOMAIN —Cont'd
Drainage districts —Cont'd
  Drainage districts with local commissioners.
    Condemnation proceedings, §51-29-35.
Joint water management districts.
  Power of eminent domain, §51-8-33.
Oil and gas.
  Underground storage of natural gas or compressed air, §§53-3-159, 53-3-161.
Pat Harrison waterway district.
  Powers of district, §51-15-119.
Pearl river basin development district.
  Powers of district, §51-11-13.
Pearl river valley water supply district.
  Metropolitan area water supply, §51-9-193.
  Powers of district, §51-9-121.
State scenic streams stewardship program.
  Designation of scenic streams.
    No power to exercise, §51-4-11.
Storm water management districts.
  Power to exercise, §51-39-29.
Tombigbee river valley water management district.
  Powers of district, §51-13-111.
Urban flood and drainage control districts.
  Powers of districts, §51-35-315.

ENVIRONMENTAL QUALITY.
Commission on environmental quality.
  Water well contractor licensing.
    Powers, §51-5-5.
Storm water management districts, §§51-39-1 to 51-39-43.

ESCATAWPA RIVER.
Scenic streams stewardship program.
  Portion designated as scenic stream, §51-4-23.10.

F

FEES.
Flood control.
  Reforestation easements.
    Annual landowner fees, §51-35-25.
Oil and gas permits, §53-3-13.
  Application fees, §§53-3-25 to 53-3-33.

FEES —Cont'd
Oil and gas permits —Cont'd
  Exploration in navigable waters, §53-3-73.
Surface mining and reclamation.
  Surface mining permit.
    Application fees, §53-7-25.
Water resources.
  Changed in approved diversion.
    Application for, §51-3-45.
  Permits.
    Application fee, §51-3-31.

FINES.
Drainage districts.
  Drainage districts with county commissioners.
    Injuring drains, §51-31-101.
  Drainage districts with local commissioners.
    Obstructing or damaging drains, §51-29-99.
    Private landowner preventing contractor from passing over lands, §51-29-101.
Marine litter, §51-2-3.
Oil and gas.
  Reports, §53-3-37.
  Transportation of crude oil, §53-3-203.
Oil and gas board, §53-1-47.
Surface coal mining and reclamation.
  Civil penalties, §53-9-55.
  Criminal penalties, §§53-9-57, 53-9-61.
    Confidentiality violations, §53-9-43.
    Conflicts of interest, §53-9-19.
Surface mining and reclamation.
  Criminal penalties, §§53-7-61, 53-7-75.
    Confidentiality violations, §53-7-75.
Water resources, §51-3-55.
  Changed in approved diversion, §51-3-45.
  Confidentiality violations, §51-3-44.
Water well drillers, §51-5-17.

FLOOD CONTROL.
Easements.
  Reforestation easements, §51-35-25.
Federal agreements with drainage districts, §§51-35-1 to 51-35-25.
  Apportionment of federal funds, §51-35-23.
  Authorized, §51-35-1.
  County agreements, §§51-35-15, 51-35-17.
  County contribution to cost of acquiring land for improvements outside county, §51-35-21.

FLOOD CONTROL —Cont'd
Federal agreements with drainage districts —Cont'd
  County roadways.
    Alteration, relocation or abandonment, §51-35-19.
  Donations of land to drainage district, §51-35-5.
  Drainage district taxes.
    Maintenance, §51-35-7.
    Rights-of-way acquisition, §51-35-13.
  Maintenance.
    County agreements for, §51-35-15.
    Drainage district tax for, §51-35-7.
  Rights-of-way.
    Acquisition by drainage districts, §§51-35-11, 51-35-13.
    County agreements for, §51-35-15.
    Drainage district agreements to furnish, §51-35-9.
  Roads.
    Alteration, relocation or abandonment of county roadways, §51-35-19.
    Relocation of roads outside drainage district, §51-35-3.
Pearl river basin development district.
  Flood control district, §§51-11-53 to 51-11-87.
  Flood control projects, §51-11-52.
Property taxes.
  Federal agreements with drainage districts.
    Drainage district taxes, §§51-35-7, 51-35-13.
Storm water management districts, §§51-39-1 to 51-39-43.
Urban flood and drainage control districts, §§51-35-301 to 51-35-351.
Watershed repair and rehabilitation cost-share program, §§51-37-1, 51-37-3.

FLORIDA.
Tennessee-Tombigbee waterway compact.
  Admission of state of Florida into compact, §51-27-7.

FORMS.
Certificates of clearance, §53-3-17.
Oil and gas.
  Integration and pooling of interest.
    Notice of hearing on petition, §53-3-7.

FORMS —Cont'd
Oil and gas —Cont'd
  Waiver of royalty proceeds, §53-3-39.
Wells below freshwater level.
  Application for permit, §53-3-27.

FORREST COUNTY.
Black creek.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.4.

FUEL.
State oil and gas board.
  General provisions, §§53-1-1 to 53-1-77.

G

GAS.
State oil and gas board.
  General provisions, §§53-1-1 to 53-1-77.

GEOLOGICAL AND MINERAL SURVEY, §§53-5-1 to 53-5-23.
Counties.
  Expenditures by counties, §§53-5-17 to 53-5-21.
Geological, economic and topographical survey board.
  Duties and responsibilities assumed by natural resources commission, §53-5-1.
Municipalities.
  Expenditures by municipalities, §§53-5-17 to 53-5-21.
Natural resources commission.
  Assumption of certain duties and responsibilities, §53-5-1.
Objects of survey, §53-5-7.
Priorities for performance of work, §53-5-23.
Reports.
  Publication, §53-5-11.
Right of entry.
  Survey employees may go on lands, §53-5-13.
United States geological survey.
  Cooperation with, §53-5-15.

GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE, §§53-11-1 to 53-11-33.
Actions for appropriate relief.
  Violations of chapter requirements, §53-11-19.

GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE —Cont'd
Appeal to chancery court.
  Persons adversely affected, §53-11-31.
Approval, §53-11-9.
Carbon dioxide storage fund, §53-11-23.
Certificate of completion of injection operations, §53-11-25.
Cessation of storage operations, §53-11-25.
Citation of act.
  Mississippi geologic sequestration of carbon dioxide act, §53-11-1.
Civil penalty.
  Noncompliance with compliance order, §53-11-19.
Class VI underground injection control program.
  Administration.
    Assessment and collection of fees, §53-11-23.
Compliance order, §53-11-19.
Definitions, §53-11-5.
Deposit of user fees and charges, §53-11-23.
Enforcement of law, §§53-11-3, 53-11-19.
Enhanced oil or gas recovery project.
  Defined, §53-11-5.
  No effect on operations, §53-11-33.
Expenses of agency to be defrayed by appropriation, §53-11-23.
Facility assessment or restoration.
  Completion of injection operations, §53-11-25.
False or inaccurate reading.
  Producing, §53-11-29.
Fees.
  Assessment, disposition, §53-11-23.
Geologic sequestration defined, §53-11-5.
Geologic sequestration facility.
  Defined, §53-11-5.
  Operation of unit as.
    Hearing, §53-11-11.
    Order of board, §§53-11-11, 53-11-13.
      Requirements, §53-11-15.
    Requiring, order of board, §53-11-13.
  Reservoir component, §53-11-5.
Hearing, §§53-11-11, 53-11-17.
Inapplicability of provisions.
  Enhanced oil or gas recovery project, §53-11-33.

GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE —Cont'd
Jurisdiction, §53-11-3.
Legislative findings, §53-11-3.
Mississippi geologic sequestration of carbon dioxide act.
  Short title, §53-11-1.
Monitor.
  Refusing to attach or install, tampering with, §53-11-29.
Oil and gas board.
  Duties and powers, §53-11-7.
Order approving, §53-11-9.
  Requirements, §53-11-15.
Ownership of carbon dioxide.
  Injection or order not to affect, §53-11-9.
Performance bonds, deposit, other assurance of performance.
  Release, §53-11-27.
Policy of state, §53-11-3.
Protection of correlative rights, §53-11-11.
Refusing to monitor, §53-11-29.
Requirements for board order, §53-11-15.
Reservoir storage.
  Approval, §53-11-9.
Rules and regulations, §53-11-7.
Sequestration fees.
  Assessment, disposition, §53-11-23.
Storage operator.
  Common carrier or public utility.
    Not classified as, not subject to duties, obligation, liabilities, §53-11-21.
  Defined, §53-11-5.
  Performance bonds, deposit, other assurance of performance.
    Release, §53-11-27.
Transporter of carbon dioxide.
  Common carrier or public utility.
    Not classified as, not subject to duties, obligation, liabilities, §53-11-21.
Violations.
  Compliance, enforcement, §53-11-19.

GEORGE COUNTY.
Black creek.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.4.
Escatawpa River.
  Portion designated as scenic stream, §51-4-23.10.

GEORGE COUNTY —Cont'd
Pascagoula river.
  Scenic streams stewardship program.
    Designation as state scenic streams, §51-4-23.5.

GOVERNOR.
Mines and minerals.
  Interstate mining compact.
    Powers of governor, §53-10-5.

GROUND WATER.
Storm water management districts, §§51-39-1 to 51-39-43.
Water well contractors, §§51-5-1 to 51-5-19.

H

HEARINGS.
Carbon dioxide.
  Geologic sequestration, §§53-11-11, 53-11-17.
Drainage districts.
  Consolidation of districts.
    Drainage districts with local commissioners, §51-29-149.
  Drainage districts with county commissioners, §§51-31-27 to 51-31-31.
    Date of hearing, §51-31-27.
    Landowners may sign at hearing, §51-31-31.
    Objections to assessment roll, §51-31-49.
    Procedure, §51-31-29.
  Drainage districts with local commissioners.
    Reforestation, §51-29-163.
  Repairs and restoration.
    Hearings on indebtedness, §51-33-25.
Geologic sequestration of carbon dioxide, §§53-11-11, 53-11-17.
Reforestation.
  Drainage districts with local commissioners, §51-29-163.
Surface mining and reclamation, §53-7-63.
Urban flood and drainage control districts.
  Petitions for creation of districts, §51-35-311.

HIGHWAYS, ROADS AND STREETS.
Drainage districts.
  Drainage districts with county commissioners.
    Drain may cross public road, §51-31-95.
  Drainage districts with local commissioners.
    Ditches may cross highways, §51-29-95.
Pat Harrison waterway district.
  Federal highways.
    Agreements relative to, §51-15-149.
Pearl river basin development district.
  Federal highways.
    Agreements relative to, §51-11-41.
Pearl river valley water supply district.
  Federal highways.
    Agreements relative to, §51-9-151.
Tombigbee river valley water management district.
  Federal highways.
    Agreements relative to, §51-13-143.

HINDS COUNTY.
Water supply district, §§51-9-101 to 51-9-227.

HOMESTEAD EXEMPTIONS.
Exemption from taxes.
  Pat Harrison waterway commission.
    Inapplicability of homestead exemption laws, §51-15-7.
Tombigbee Valley Authority.
  Inapplicability of homestead exemption laws, §51-13-7.

I

IMMUNITY.
Abandoned mine lands reclamation.
  Federal law compliance, §53-9-105.
Drainage districts with local commissioners.
  Commissioners not liable for damages, §51-29-69.
Water management districts.
  Board of commissioners.
    Liability on damages, §51-7-39.

INCORPORATION.
Public water authorities, §51-41-9.

INJECTION OF CARBON DIOXIDE INTO OIL AND GAS RESERVOIRS.

Geologic sequestration of carbon dioxide, §§53-11-1 to 53-11-33.

INJUNCTIONS.

Abandoned mine lands reclamation.
  Restraint of interference with reclamation, §53-9-119.

Oil and gas board.
  Restrictions on injunctions against board, §53-1-41.
  Violations or threatened violations, §53-1-43.

Surface coal mining and reclamation.
  Violations of provisions, §53-9-69.

Surface mining and reclamation.
  Actions to restrain violations, §53-7-59.

INSPECTIONS.

Dams.
  Safety inspections, §51-3-39.

Reservoirs.
  Safety inspections, §51-3-39.

Surface coal mining and reclamation.
  Alleged violations of provisions, §53-9-69.
  Department representatives, §53-9-51.

Surface mining and reclamation, §53-7-55.
  Permits.
    On-site inspection of proposed area as condition of granting, §53-7-39.
  Release of bond.
    Inspection and evaluation of reclamation work, §53-7-67.
  Soil and water conservation districts, §53-7-57.

INSURANCE.

Surface coal mining and reclamation.
  Permit applications.
    Insurance coverage, §53-9-25.

INTEREST.

Drainage districts.
  Borrowing funds from government agencies, §51-33-17.
  Drainage districts with county commissioners.
    Additional bonds, §51-31-113.

INTEREST —Cont'd

Drainage districts —Cont'd
  Drainage districts with local commissioners.
    Negotiable evidences of debt to contractor, §51-29-67.

Joint water management districts.
  Bond issues, §51-8-39.

Oil and gas.
  Royalties.
    Payment of interest on royalty proceeds which have not been disbursed, §53-3-39.

Pat Harrison waterway district.
  Bond issues, §51-15-133.

Pearl river basin development district.
  Bond issues, §51-11-23.
    Flood control district, §51-11-71.

Pearl river valley water supply district.
  Bond issues, §51-9-135.

Tombigbee river valley water management district.
  Bond issues, §51-13-125.

INTERSTATE COMPACTS.

Mining.
  Interstate mining compact, §§53-10-1 to 53-10-5.

Tennessee-Tombigbee waterway compact, §§51-27-1 to 51-27-7.

Water resources.
  Commission may negotiate and recommend to legislature, §51-3-41.

INTERSTATE MINING COMPACT, §§53-10-1 to 53-10-5.

INTERSTATE OIL COMPACT COMMISSION.

State oil and gas board.
  Contributions to commission, §53-1-101.

INVESTIGATIONS.

Surface mining and reclamation.
  Complaint alleging violation, §53-7-65.

INVESTMENTS.

Pat Harrison waterway district.
  Bonds as legal investments, §51-15-145.

Pearl river basin development district.
  Flood control district.
    Bonds as legal investments, §51-11-77.

INVESTMENTS —Cont'd
Pearl river valley water supply district.
  Bond issues.
    Metropolitan area water supply, §51-9-219.
  Bonds as legal investments, §51-9-147.
Tombigbee river valley water management district.
  Bonds as legal investments, §51-13-139.
Urban flood and drainage control districts.
  Bonds as legal investments, §51-35-337.

IRRIGATION.
Drainage districts.
  Farm lands, §§51-33-33, 51-33-35.

ITAWAMBA COUNTY.
Tombigbee River.
  Scenic streams stewardship program.
    Portions of river flowing through county eligible for nomination, §51-4-21.7.

J

JACKSON, CITY OF.
Water supply district.
  Metropolitan area water supply, §§51-9-189 to 51-9-227.

JACKSON COUNTY.
Black creek.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.4.
Escatawpa River.
  Portion designated as scenic stream, §51-4-23.10.
  State scenic streams stewardship program eligibility, §51-4-21.6.

JOINT WATER MANAGEMENT DISTRICTS, §§51-8-1 to 51-8-65.
Agreements with state or federal government, §51-8-55.
Amendments to plan, §51-8-65.
Annexation.
  Adjacent areas, §51-8-53.
Appeals.
  Local government findings, §51-8-17.
Board of commissioners, §§51-8-21 to 51-8-27.
Bond issues, §§51-8-35 to 51-8-49.

JOINT WATER MANAGEMENT DISTRICTS —Cont'd
Contracts.
  Construction contracts, §51-8-51.
Corporate body.
  Acquisition and assumption of powers, duties and responsibilities of district, §51-8-63.
Creation, §51-8-1.
  Approval, §51-8-65.
  Costs incident to proceedings, §51-8-15.
  Election, §51-8-11.
    Petition for, §51-8-11.
  Findings required, §§51-8-9, 51-8-11.
  Hearings, §51-8-7.
  Resolution, §51-8-13.
    Initiation of creation, §51-8-5.
Debt service funds.
  Special improvement bonds, §51-8-45.
Eminent domain.
  Power of eminent domain, §51-8-33.
Interest.
  Bond issues, §51-8-39.
Mississippi Delta study.
  Expenditure of funds, §51-8-43.
Municipalities.
  Applicability of municipal standards, §51-8-57.
Penalties for nonpayment.
  Rates, fees, tolls, and charges, §51-8-47.
Powers, §§51-8-29, 51-8-31.
  Additional statutory authority not required, §51-8-59.
  Eminent domain, §51-8-33.
Property taxes.
  Special tax levy, §51-8-43.
Purpose, §51-8-3.
Rates, fees, tolls, and charges.
  Boards of commissioners to prescribe, §51-8-47.
Refunding bonds, §51-8-39.
Rules and regulations.
  Board of commissioners, §51-8-27.
Special improvement bonds.
  Funds for debt service, §51-8-45.
Statements.
  Annual statement, §51-8-61.
Status.
  Public corporation in perpetuity, §51-8-19.
Taxation.
  Exemption from taxes, §51-8-49.
  Property taxes.
    Special tax levy, §51-8-43.

JOINT WATER MANAGEMENT DISTRICTS —Cont'd

United States.

  Agreements with federal government, §51-8-55.

Validation of public bonds, §51-8-39.

Water management districts generally, §§51-7-1 to 51-7-71.

JURISDICTION.

Drainage districts with county commissioners.

  Action to organize district lying in two or more counties, §51-31-79.

  Annual reports, §51-31-81.

  Organization of district, §51-31-23.

  Suits, §51-31-105.

K

KENTUCKY.

Tennessee-Tombigbee waterway compact.

  Admission of Commonwealth of Kentucky into compact, §51-27-5.

L

LAMAR COUNTY.

Black creek.

  Scenic streams stewardship program.

    Portion designated as scenic stream, §51-4-23.4.

LANDLORD AND TENANT.

Pat Harrison waterway district.

  Commercial leases from district.

    Appraisals, §51-15-165.

    Renewal of lease, §51-15-165.

  Residential leases from district.

    Default or breach.

      Termination by district, §51-15-163.

    Renewal of residential lease, §51-15-163.

LAW ENFORCEMENT OFFICERS.

Pearl river valley supply district.

  Reservoir police officers, §§51-9-171 to 51-9-185.

LEAKE COUNTY.

Water supply district, §§51-9-101 to 51-9-227.

LEASES.

Drainage districts.

  Drainage districts with local commissioners.

    Mineral leases, §51-29-159.

  Tax lands, §51-33-49.

    Terms of lease, §51-33-55.

Oil and gas.

  Agreements for cooperative development and operation under leases by public officers, §53-3-51.

Pat Harrison waterway district.

  Commercial leases from district.

    Appraisals, §51-15-165.

    Renewal of lease, §51-15-165.

  Residential leases from district.

    Default or breach.

      Termination by district, §51-15-163.

    Renewal of residential lease, §51-15-163.

Pearl river valley water supply district.

  Residential property leases in district.

    Renewal, §§51-9-122, 51-9-122.1.

Surface coal mining and reclamation.

  Lease of state coal deposits, §53-9-83.

LEGISLATURE.

State scenic streams stewardship program.

  Designation of scenic streams, §51-4-9.

LEVEES AND LEVEE DISTRICTS.

Dams constructed on watercourse in district.

  District permission required, §51-3-39.

Drainage districts, §§51-33-1 to 51-33-127.

  County commissioners, §§51-31-1 to 51-31-143.

  Flood control agreements with United States, §§51-35-1 to 51-35-25.

  Local commissioners, §§51-29-1 to 51-29-165.

  Urban flood and drainage control districts, §§51-35-301 to 51-35-351.

Flood and drainage control districts.

  Urban districts, §§51-35-301 to 51-35-351.

Flood control agreements.

  Drainage district agreement with United States, §§51-35-1 to 51-35-25.

LEVEES AND LEVEE DISTRICTS —Cont'd
Pearl river basin development district.
  Construction of levee, powers, §51-11-59.
Short-term borrowing by districts authorized, §51-35-340.
Storm water management districts, §§51-39-1 to 51-39-43.
Water management district created within levee district.
  Approval required, §§51-7-5, 51-7-17.

LICENSES AND PERMITS.
Pat Harrison waterway district.
  Appropriation permits, §51-15-127.
Pearl river basin development district.
  Flood control district.
    Appropriation permits, §51-11-61.
Pearl river valley water supply district.
  Appropriation permit, §51-9-129.
Tombigbee river valley water management district.
  Appropriation permits, §51-13-119.
Urban flood and drainage control districts.
  Appropriation permits, §51-35-321.
Water well contractors, §§51-5-1 to 51-5-19.

LIENS.
Abandoned mine lands reclamation.
  Valuation of reclaimed land, §53-9-113.
Drainage districts.
  Drainage districts with local commissioners.
    Bonds as lien on land, §51-29-89.
  Release of land from lien of assessment, §§51-33-59 to 51-33-73.
Joint water management districts.
  Bond issues.
    Statutory lien in favor of bondholders, §51-8-41.
Navigable waters.
  Obstruction of streams.
    Logs, timber or lumber, §§51-1-7, 51-1-9.
Oil and gas.
  Royalty proceeds, §53-3-41.
Public water authorities.
  Bond issues, §51-41-25.

LIMITATION OF ACTIONS.
Oil and gas.
  Damages.
    Actions against nonresidents, §53-3-11.

LITTERING.
Marine litter, §§51-2-1 to 51-2-7.

LOCAL GOVERNMENTS.
Geological and mineral survey.
  Cost-sharing by governmental subdivisions, §53-5-19.

M

MADISON COUNTY.
Water supply district, §§51-9-101 to 51-9-227.

MAPS AND PLATS.
Geological and mineral survey, §§53-5-1 to 53-5-23.

MARINAS.
Marine litter.
  Disposal facilities on site, §51-2-7.

MARINE LITTER, §§51-2-1 to 51-2-7.
Commission to promulgate regulations, §51-2-5.
Fines, §51-2-3.
Marinas.
  Disposal facilities on site, §51-2-7.
Misdemeanors, §51-2-3.
Short title, §51-2-1.

MASTERS.
Drainage districts.
  Drainage districts with county commissioners.
    Chancery courts, §§51-31-107, 51-31-109.

METROPOLITAN AREA WATER SUPPLY ACT, §§51-9-189 to 51-9-227.

MINERAL LEASES.
Drainage districts.
  Drainage districts with local commissioners, §51-29-159.

MINES AND MINERALS.
Carbon dioxide.
  Geologic sequestration, §§53-11-1 to 53-11-33.
Drainage districts.
  Drainage districts with local commissioners.
    Mineral leases, §51-29-159.

MINES AND MINERALS —Cont'd
Geological and mineral survey, §§53-5-1 to 53-5-23.
Geologic sequestration of carbon dioxide, §§53-11-1 to 53-11-33.
Interstate mining compact, §§53-10-1 to 53-10-5.
  Adoption by Mississippi of compact, §53-10-2.
  Bylaws of commission.
    Public posting and availability for public inspection, §53-10-3.
  Conflict of laws.
    Priority of Mississippi laws, §53-10-3.
  Dues and other expenses.
    Source for payment of dues, etc, §53-10-4.
  Governor's powers, §53-10-5.
  Inspection of books and accounts of commission, §53-10-3.
  Joining and participating in compact, §53-10-2.
  Legislative findings and intent, §53-10-1.
  Purposes of compact, §53-10-1.
  Withdrawal from compact.
    Procedure, §53-10-5.
Reclamation of land.
  Abandoned mine lands reclamation, §§53-9-101 to 53-9-123.
  Surface mining and reclamation.
    Coal mining, §§53-9-1 to 53-9-89.
    Generally, §§53-7-1 to 53-7-77.
Surface mining and reclamation.
  Coal mining.
    Abandoned mine lands reclamation, §§53-9-101 to 53-9-123.
    General provisions, §§53-9-1 to 53-9-89.
  General provisions, §§53-7-1 to 53-7-77.

MISSISSIPPI DELTA STUDY.
Expenditure of funds for, §51-8-43.

MISSISSIPPI GEOLOGIC SEQUESTRATION OF CARBON DIOXIDE ACT, §§53-11-1 to 53-11-33.

MISSISSIPPI MARINE LITTER ACT OF 1989, §§51-2-1 to 51-2-7.

MISSISSIPPI SCENIC STREAMS STEWARDSHIP ACT, §§51-4-1 to 51-4-23.10.

MISSISSIPPI STORM WATER MANAGEMENT DISTRICT ACT, §§51-39-1 to 51-39-43.

MISSISSIPPI SURFACE COAL MINING AND RECLAMATION LAW, §§53-9-1 to 53-9-89.

MISSISSIPPI SURFACE MINING AND RECLAMATION LAW, §§53-7-1 to 53-7-77.

MISSISSIPPI WATERSHED REPAIR AND REHABILITATION COST-SHARE PROGRAM, §§51-37-1, 51-37-3.

MUNICIPALITIES.
Flood control.
  Urban flood and drainage control districts, §§51-35-301 to 51-35-351.
Geological and mineral survey.
  Expenditures by municipalities, §§53-5-17 to 53-5-21.
Joint water management districts.
  Applicability of municipal standards, §51-8-57.
Pearl river region development.
  Donations by certain municipalities, §51-9-11.
Storm water management districts, §§51-39-1 to 51-39-43.
Windstorm mitigation programs.
  Municipal fire protection fund.
    Use of money appropriated for, §53-1-37.

MUTUAL AID AGREEMENTS.
Pearl river valley water supply district.
  Reservoir police officers.
    Law enforcement assistance during emergencies, §51-9-176.

N

NAMES.
Public water authorities, §51-41-9.

NATIVE GAS.
Underground storage, §53-3-151.

NATURAL GAS.
Underground storage of natural gas or compressed air, §§53-3-151 to 53-3-165.

NAVIGABLE WATERS.
Damages to bridges, §51-1-11.

NAVIGABLE WATERS —Cont'd
Defined, §51-1-1.
Obstructing waterways.
  Removal, §51-1-5.
    Lien for cost, §§51-1-7, 51-1-9.
Oil and gas exploration, §§53-3-71 to 53-3-75.
Operation of certain conveyances on public waterways prohibited, §51-1-4.
Rights on public waterways, §51-1-4.
What constitutes public waterways, §51-1-4.

NEGOTIABLE INSTRUMENTS.
Pearl river basin development district.
  Flood control district.
    Bonds as negotiable instruments, §51-11-71.

NESHOBA COUNTY.
Water supply district, §§51-9-101 to 51-9-227.

NEWTON COUNTY.
Chunky creek and chunky river.
  Scenic streams stewardship program.
    Eligibility for nomination, §51-4-21.2.

NONPROFIT CORPORATIONS.
Public water authorities, §§51-41-1 to 51-41-33.

NOTICE.
Abandoned mine lands reclamation.
  Property adversely affected by past coal mining.
    Right of entry, §53-9-107.
  Request for federal grant support, §53-9-105.
Drainage districts.
  Dissolution of districts, §§51-33-93, 51-33-101, 51-33-109.
  Drainage districts with county commissioners.
    Appraisement by commissioners, §51-31-57.
    Assessments, §51-31-47.
    Contracts.
      Advertisement for bids, §51-31-71.
    Hearing on placing of district under supervisors, §51-31-139.
    Issuance of additional bonds, §51-31-115.
    Passing railroad with canal, §51-31-91.

NOTICE —Cont'd
Drainage districts —Cont'd
  Drainage districts with county commissioners —Cont'd
    Petition for creation of district, §51-31-25.
    Subdistrict proceedings, §51-31-121.
    Sufficiency of notices, §51-31-117.
  Drainage districts with local commissioners.
    Additional levy for maintenance of system.
      Filing of application or petition, §51-29-79.
    Assessment to landowners, §51-29-31.
    Consolidation of districts, §51-29-147.
    Enlargement of boundaries, §51-29-133.
  Legal indebtedness.
    Bond issue to fund, §51-33-37.
Oil and gas board.
  Integration and pooling of interest.
    Hearing on petition, §53-3-7.
  Public hearings, §53-1-21.
  Service of notice, §53-1-25.
  Unitization of oil and gas fields and pools.
    Time and manner of giving notice, §53-3-115.
Oil and gas wells.
  Drilling, §53-3-11.
Pearl river basin development district.
  Flood control district.
    Bond elections, §51-11-65.
    Bond validation proceedings, §51-11-75.
Pearl river valley water supply district.
  Creation of district.
    Election, §51-9-115.
    Hearing, §51-9-111.
Scenic streams.
  Designation, §51-4-11.
State scenic streams stewardship program.
  Designation of scenic streams, §51-4-11.
Storm water management districts.
  Payment of cost, §51-39-13.
Surface coal mining and reclamation.
  Rules and regulations.
    Hearings on, §53-9-11.

NOTICE —Cont'd
Surface mining and reclamation.
  Permits.
    Hearing on application for permit or amendment thereof, §53-7-45.
  Rules and regulations.
    Public hearing on, §53-7-11.
Tombigbee river valley water management district.
  Construction contracts.
    Advertisement for bids, §51-13-113.
Urban flood and drainage control districts.
  Bond election, §51-35-325.
  Bond redemption, §51-35-331.
  Construction contracts.
    Advertisement for sealed proposals, §51-35-319.
  Creation of districts.
    Hearing on petition, §51-35-309.
Water management districts.
  Hearing by chancellor on organization, §§51-7-17, 51-7-19.
  Petition for creation of district, §51-7-11.
Water resources.
  Pre-existing rights or beneficial usage, §51-3-5.

NOXUBEE COUNTY.
Noxubee River.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.9.
    Portion eligible for nomination, §51-4-21.9.

NOXUBEE RIVER.
Scenic streams stewardship program.
  Portion designated as scenic stream, §51-4-23.9.
  Portions of river flowing through county eligible for nomination, §51-4-21.9.

O

OATHS OR AFFIRMATIONS.
Joint water management districts.
  Board of commissioners, §51-8-25.
Public water authorities.
  Board of directors, §51-41-13.
Water management districts.
  Board of commissioners.
    Oath of office, §51-7-13.

OFF-ROAD VEHICLES.
Public waterways.
  Operation of certain conveyances on public waterways prohibited, §51-1-4.

OIL AND GAS.
Bonds, surety.
  Permits.
    Nonresidents, §53-3-11.
Carbon dioxide.
  Injection into oil and gas reservoirs.
    Sequestration of carbon dioxide, §§53-11-1 to 53-11-33.
Certificate of compliance.
  Defined, §53-1-3.
  Required before connection with pipelines, §53-3-15.
Damages.
  Underground storage of natural gas or compressed air.
    Action for provable damages, §53-3-163.
Definitions.
  Applicability of certain definitions, §53-3-1.
Drilling of wells.
  Notice, §53-3-11.
  Regulation, §53-3-5.
Drilling unit.
  Defined, §53-1-3.
  Flexible oil or gas drilling units, §53-3-23.
  Integration of interest, §53-3-7.
Eminent domain.
  Underground storage of natural gas or compressed air, §§53-3-159, 53-3-161.
Exploration in navigable waters, §§53-3-71 to 53-3-75.
Flexible oil or gas drilling units, §53-3-23.
Geologic sequestration of carbon dioxide, §§53-11-1 to 53-11-33.
Illegal oil and gas.
  Defined, §53-1-3.
  Seizure and sale as contraband, §53-3-19.
  Transactions illegal, §53-3-17.
Injection wells.
  Applications for permits.
    Commencement of drilling of injection well, §53-3-29.
    Reworking abandoned well to injection well, §53-3-31.

OIL AND GAS —Cont'd
Injection wells —Cont'd
  Applications for permits —Cont'd
    Reworking operating well or injection well, §53-3-33.
  Geologic sequestration of carbon dioxide, §§53-11-1 to 53-11-33.
Leases.
  Agreements for cooperative development and operation under leases by public officers, §53-3-51.
Limitation of actions.
  Damages.
    Actions against nonresidents, §53-3-11.
Permits.
  Applications for, §§53-3-25 to 53-3-33.
  Deposit of user fees and charges, §53-3-13.
  Expenses of agency to be defrayed by appropriations, §53-3-13.
  Fees, §53-3-13.
    Application fees, §§53-3-25 to 53-3-33.
    Exploration in navigable waters, §53-3-73.
  Nonresidents.
    Surety or cash bond for, §53-3-11.
  Required, §53-3-11.
  Stratigraphic test or well below freshwater level.
    Drilling permit required, §53-3-27.
Pooling agreements and orders, §53-3-7.
Production.
  Regulation by oil and gas board, §53-3-5.
Reports.
  Producer or operator of oil or gas well, §§53-3-35, 53-3-37.
Royalties.
  Interest on royalty proceeds which have not been disbursed.
    Payment, §53-3-39.
  Lien to secure payment of royalty proceeds, §53-3-41.
Searches and seizures.
  Illegal oil and gas.
    Seizure and sale as contraband, §53-3-19.
State oil and gas board.
  General provisions, §§53-1-1 to 53-1-77.
Statute of limitations.
  Damages.
    Actions against nonresidents, §53-3-11.

OIL AND GAS —Cont'd
Stratigraphic test or well below freshwater level.
  Drilling permit required, §53-3-27.
Transportation of crude oil, §§53-3-201, 53-3-203.
Underground storage of natural gas or compressed air, §§53-3-151 to 53-3-165.
  Authorized, §53-3-155.
  Damages.
    Action for provable damages, §53-3-163.
  Definitions, §53-3-151.
  Eminent domain, §§53-3-159, 53-3-161.
  Escape of natural gas.
    Protection against, §53-3-157.
  Legislative declaration, §53-3-153.
  Offshore waters.
    Storage in prohibited, §53-3-165.
  Pollution.
    Protection against, §53-3-157.
Unitization of oil and gas fields and pools.
  Administration of provisions, §53-3-117.
  Allocation of production, §53-3-111.
  Appeals.
    Chancery court review of board order, §53-3-119.
  Applications for, §53-3-101.
  Authority of unit operator, §53-3-113.
  Court review of order of board by appeal, §53-3-119.
  Extension of units and inclusion of additional pools, §53-3-109.
  Notice.
    Time and manner of giving, §53-3-115.
  Orders of board for unit operations.
    Amendments of orders, §53-3-109.
    Court review by appeal, §53-3-119.
    Extension of units, §53-3-109.
    Generally, §53-3-103.
    Inclusion of additional pools, §53-3-109.
    Provisions and requirements, §53-3-105.
    When effective, §53-3-107.
Waste.
  Defined, §53-1-3.
  Unlawful, §53-3-3.

OIL AND GAS BOARD, §§53-1-1 to 53-1-77.
Administration expense tax, §§53-1-71 to 53-1-77.

OIL AND GAS BOARD —Cont'd
Appeals.
  Chancery court appeals, §53-1-39.
  Supreme court appeals, §53-1-45.
  Unitization of oil and gas fields and pools.
    Chancery court review of board order, §53-3-119.
Attorney general.
  Attorney for board, §53-1-11.
  Representation of board in proceedings for collection of penalties, §53-1-47.
Carbon dioxide.
  Geologic sequestration, §§53-11-1 to 53-11-33.
Chancery courts.
  Appeals to chancery court, §53-1-39.
Contempt.
  Noncompliance with subpoenas of board, §53-1-35.
Creation, §53-1-5.
Definitions, §53-1-3.
  Administration expense tax, §53-1-71.
Deposit of user charges and fees, §53-1-7.
Expenses defrayed by appropriations, §53-1-7.
Hearings, §53-1-21.
  Request for hearing, §53-1-29.
Injunctions.
  Restrictions on injunctions against board, §53-1-41.
  Violations or threatened violations, §53-1-43.
Interstate oil compact commission.
  Contributions to, §53-1-101.
Legislative declaration, §53-1-1.
Members, §53-1-5.
  Eligibility to serve on board, §53-1-13.
  Expenses, §53-1-15.
Notice.
  Integration and pooling of interest.
    Hearing on petition, §53-3-7.
  Public hearings, §53-1-21.
  Service of notice, §53-1-25.
  Unitization of oil and gas fields and pools.
    Time and manner of giving notice, §53-3-115.
Orders, §53-1-17.
  Appeals to chancery court, §53-1-39.
  Emergency orders, §53-1-23.
  Penalties for violations, §53-1-47.
  Pooling orders, §53-3-7.

OIL AND GAS BOARD —Cont'd
Orders —Cont'd
  Public hearings, §53-1-21.
  Record of orders, §53-1-27.
  Unitization of oil and gas fields and pools, §§53-3-103 to 53-3-109, 53-3-119.
Penalties for violations, §53-1-47.
  Applicability of penalties, §53-3-21.
Powers, §§53-1-17, 53-1-35.
  Drilling and production regulation, §53-3-5.
Production.
  Allowable production, §53-3-9.
Records.
  Public inspection of records, §53-1-31.
  Rules, regulations and orders, §53-1-27.
Right of entry.
  Supervisor and representatives to have access to all wells, §53-1-33.
Rules and regulations, §53-1-17.
  Appeals to chancery court, §53-1-39.
  Emergency rules and regulations, §53-1-23.
  Penalties for violations, §53-1-47.
  Public hearings, §53-1-21.
  Record of rules and regulations, §53-1-27.
Rules of procedure before board, §53-1-19.
Service of process.
  Notices, §53-1-25.
  Service upon board, §53-1-37.
Shorthand reporter, §53-1-19.
State oil and gas supervisor, §53-1-7.
  Access to all wells, §53-1-33.
  Employees, §53-1-9.
  Service upon supervisor of notices and process required to be served upon board, §53-1-37.
Subpoenas, §53-1-35.
Supreme court.
  Appeals to supreme court, §53-1-45.
Witnesses.
  Powers as to witnesses, §53-1-35.

OIL AND GAS LEASES.
Local governments.
  Agreements for cooperative development and operation under leases by public officers, §53-3-51.

OIL BARRELS TAX, §§53-1-71 to 53-1-77.
Definitions, §53-1-71.

OIL BARRELS TAX —Cont'd
Deposit of user charges and fees, §§53-1-73, 53-1-77.
Expenses of agency to be defrayed by appropriations, §§53-1-73, 53-1-77.
Imposition of tax, §53-1-73.
Persons liable, §53-1-75.

OPEN MEETINGS.
Public water authorities.
  Board of directors, §51-41-13.

ORDERS.
Water management districts.
  Dissolution hearing and order, §51-7-45.

ORDINANCES.
Storm water management districts.
  Adoption ordinance authorizing district, §51-39-11.
  Appellate review, §51-39-15.

P

PARKS AND RECREATION.
Pat Harrison waterway district.
  Powers as to facilities, §51-15-123.
Pearl river basin development district.
  Powers as to facilities, §51-11-17.
Pearl river valley water supply district.
  Powers as to facilities, §51-9-125.
Surface mining and reclamation.
  Mining prohibited in national and state park lands, §53-7-47.
Tombigbee river valley water management district.
  Powers as to facilities, §51-13-115.

PAT HARRISON WATERWAY COMMISSION, §§51-15-1 to 51-15-9.
Financing, §51-15-5.
Homestead exemption not applicable, §51-15-7.
Membership and organization of the board, §51-15-1.
Powers and duties, §51-15-3.
Supplemental to other laws, §51-15-9.

PAT HARRISON WATERWAY DISTRICT, §§51-15-101 to 51-15-165.
Appeals.
  Creation of district, §51-15-117.

PAT HARRISON WATERWAY DISTRICT —Cont'd
Appropriation permits, §51-15-127.
April 6, 1995.
  Borrowing money or issuance of bonds after date, §51-15-136.
Board of directors, §51-15-105.
  Rules and regulations, §51-15-125.
Bond issues, §§51-15-131 to 51-15-145.
  Tax exemption, §51-15-155.
Budgets.
  Estimated expenditures for support, maintenance and operation of district, §51-15-158.
Conflict of laws, §51-15-153.
Contracts.
  Powers of district, §51-15-119.
Cooperation with other governmental agencies, §51-15-151.
Creation of district.
  Appeals, §51-15-117.
  Authority to re-organize, §51-15-103.
  Election on question of inclusion of county, §§51-15-113, 51-15-115.
  Hearing, §51-15-111.
  Petition, §51-15-107.
    Proceedings on, §51-15-109.
  Preliminary expenses, §51-15-157.
Depository for funds of district, §51-15-147.
Elections.
  County election on question of inclusion in district, §§51-15-113, 51-15-115.
Eminent domain.
  Powers of district, §51-15-119.
Highways.
  Federal highways.
    Agreements relative to, §51-15-149.
Leases from district.
  Commercial leases.
    Appraisals, §51-15-165.
    Renewal of lease, §51-15-165.
  Residential leases.
    Default or breach.
      Termination by district, §51-15-163.
    Renewal of residential lease, §51-15-163.
Legislative declaration, §51-15-101.
Limitation on amount of bonds, §51-15-135.
Parks and recreation.
  Powers as to facilities, §51-15-123.

PAT HARRISON WATERWAY DISTRICT —Cont'd
Powers of district, §51-15-119.
  Park and recreation facilities, §51-15-123.
Property taxes.
  State tax used for water supply district fund, §51-15-129.
Refunding bonds, §51-15-143.
Rules and regulations.
  Board of directors, §51-15-125.
Savings clause, §51-15-161.
School lands, sixteenth section.
  Flooding of lands, §51-15-159.
State departments and agencies.
  Cooperation with other governmental agencies, §51-15-151.
Taxation.
  Exemption from taxes, §51-15-155.
  Property taxes.
    State tax used for water supply district fund, §51-15-129.
Waste.
  Flooding of sixteenth section school lands not to constitute waste, §51-15-159.
Withdrawal of county from district, §51-15-118.

PEARL RIVER BASIN DEVELOPMENT DISTRICT, §§51-11-11 to 51-11-87.
Board of directors, §51-11-5.
  Rules and regulations, §51-11-19.
Bond issues, §§51-11-21 to 51-11-31.
  Attorneys' fees in connection with, §51-11-11.
  Flood control district, §§51-11-63 to 51-11-79.
  Tax exemption of bond, §51-11-45.
Conflict of laws, §51-11-49.
Contracts.
  Construction contracts, §51-11-15.
  Powers of district, §51-11-13.
Cooperation with other governmental agencies, §51-11-43.
Counties which may become members of district, §51-11-7.
Creation of district, §51-11-9.
  Authority to organize, §51-11-3.
  Counties which may become members, §51-11-7.
  Preliminary expenses, §51-11-37.
Depository for funds of district, §51-11-39.

PEARL RIVER BASIN DEVELOPMENT DISTRICT —Cont'd
Elections.
  Bond elections, §§51-11-65 to 51-11-69.
    Ballots, §51-11-67.
    Certification, §51-11-69.
    Intention to issue, §51-11-65.
    Procedure, §51-11-67.
    Publication requirements, §51-11-65.
    Results, §51-11-69.
    Time for issuance after vote, §51-11-69.
    Voting locations, §51-11-67.
  County participation in district and levy of tax, §51-11-9.
  Referendum on creation, §51-11-55.
Eminent domain.
  Powers of district, §51-11-13.
Flood control district, §§51-11-53 to 51-11-87.
  Appropriation permits, §51-11-61.
  Board of directors, §51-11-57.
    Negotiation and contracting powers, §51-11-83.
  Bond elections, §§51-11-65 to 51-11-69.
    Ballots, §51-11-67.
    Certification, §51-11-69.
    Intention to issue, §51-11-65.
    Procedure, §51-11-67.
    Publication requirements, §51-11-65.
    Results, §51-11-69.
    Time for issuance after vote, §51-11-69.
    Voting locations, §51-11-67.
  Bond issues, §§51-11-63 to 51-11-79.
  Borrowing money, §51-11-81.
  Cooperation and coordination with political entities, §51-11-85.
  Creation, §51-11-55.
  Definitions, §51-11-53.
  Duties, §51-11-59.
  Powers, §51-11-59.
  Referendum on creation, §51-11-55.
Flood control project, §51-11-52.
Highways.
  Federal highways.
    Agreements relative to, §51-11-41.
Legislative declaration, §51-11-1.
Limitation on amount of bonds, §51-11-25.
Parks and recreation.
  Powers as to facilities, §51-11-17.
Powers of district, §§51-11-11, 51-11-13.
  Flood control project, §51-11-52.

PEARL RIVER BASIN DEVELOPMENT DISTRICT —Cont'd

Powers of district —Cont'd

- Park and recreation facilities, §51-11-17.

Property taxes.

- Election on question of levy, §51-11-9.
- Flood control district.
  - Levy for payment of bonds, §51-11-73.
- Payments to district by county, §51-11-31.
- State tax used for development district fund, §51-11-33.

Savings clause, §51-11-51.

School lands, sixteenth section.

- Flooding of sixteenth section school lands not to constitute waste, §51-11-47.

State departments and agencies.

- Cooperation with other governmental agencies, §51-11-43.
- Flood control district.
  - Cooperation and coordination with political entities, §51-11-85.

Taxation.

- Additional funds from counties, §51-11-35.
- Exemption from taxation, §51-11-45.
  - Flood control district, §51-11-79.
- Property taxes.
  - Election on question of levy, §51-11-9.
  - Flood control district bond payment, §51-11-73.
  - Payments to district by county, §51-11-31.
  - State tax used for development district fund, §51-11-33.

Validation of bonds, §51-11-27.

Waste.

- Overflow of school lands not to constitute, §51-11-47.

Withdrawal of county, §51-11-87.

PEARL RIVER INDUSTRIAL COMMISSION, §§51-9-1 to 51-9-11.

Donations, §51-9-11.

Effect of provisions on other laws, §51-9-9.

Establishment, §51-9-1.

Financing, §51-9-7.

Members, §51-9-3.

Powers and duties, §51-9-5.

PEARL RIVER REGION DEVELOPMENT, §§51-9-1 to 51-9-11.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT, §§51-9-101 to 51-9-227.

Appeals.

- Creation of district, §51-9-119.

Board of directors, §51-9-107.

- Rules and regulations, §51-9-127.

Bond issues, §§51-9-133 to 51-9-147, 51-9-157.

- Board of directors to issue, §51-9-133.
- Details of bonds, §51-9-135.
- Interest, §51-9-135.
- Legal investments for public funds, §51-9-147.
- Limitation on amount of bonds, §51-9-137.
- Metropolitan area water supply, §§51-9-201 to 51-9-225.
- Refunding bonds, §51-9-145.
- Special tax levy, §51-9-139.
- Supplemental powers conferred in issuance, §51-9-135.
- Trust agreements, §51-9-143.
- Validation of bonds, §51-9-141.

Bonds, surety.

- Board of directors.
  - Treasurer, §51-9-107.
- Reservoir police officers, §51-9-181.

Citation of act, §51-9-101.

Conflict of laws.

- Effect of other laws, §51-9-155.

Contracts.

- Construction contracts, §51-9-123.
- Metropolitan area water supply.
  - Contracts between district and public agencies, §51-9-201.
  - Powers of district, §51-9-193.
- Powers of district, §§51-9-121, 51-9-193.

Creation of district.

- Appeals, §51-9-119.
- Authority to organize, §51-9-105.
- Election, §§51-9-115, 51-9-117.
- Hearing, §51-9-113.
  - Notice, §51-9-111.
- Petition, §51-9-109.
- Preliminary expenses, §51-9-159.
- Report of board of water commissioners, §51-9-111.

Depository for funds of district, §51-9-149.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT —Cont'd
Eminent domain.
  Powers of district, §51-9-121.
    Metropolitan area water supply, §51-9-193.
Highways.
  Federal highways.
    Agreements relative to, §51-9-151.
Leases.
  Residential property leases in district.
    Renewal, §§51-9-122, 51-9-122.1.
Legislative declarations, §51-9-103.
Metropolitan area water supply, §§51-9-189 to 51-9-227.
  Bond issues, §§51-9-201 to 51-9-225.
  Citation of act, §51-9-189.
  Contracts.
    Contracts between district and public agencies, §51-9-201.
    Powers of district, §51-9-193.
  Cumulative nature of provisions, §51-9-225.
  Definitions, §51-9-191.
  Investments.
    Bond issues, §51-9-219.
  Issuance of bonds, sale price, other requirements, §51-9-205.
  Obligations of state and district.
    Bond issues, §51-9-211.
  Outstanding and unpaid bonds.
    Rights and powers of district, §51-9-221.
  Powers of district, §51-9-193.
    Bond issues, §51-9-213.
  Public agencies.
    Adjustment of rates charged by, §51-9-197.
    Contracts between district and public agencies, §51-9-201.
    Defined, §51-9-191.
    Payments by for water supply, §51-9-195.
  Purpose of act, §51-9-189.
  Severability of provisions, §51-9-227.
  Taxes and fees.
    Exemption of district, §51-9-217.
Parks and recreation.
  Powers as to facilities, §51-9-125.
Permits.
  Appropriation permit, §51-9-129.
Powers of district, §51-9-121.
  Metropolitan area water supply, §51-9-193.
    Bond issues, §51-9-213.

PEARL RIVER VALLEY WATER SUPPLY DISTRICT —Cont'd
Property taxes.
  Special tax levy for payment of bonds, §51-9-139.
  State tax used for water supply district fund, §51-9-131.
Public service commission.
  Authority, §51-9-155.
Reservoir police officers, §§51-9-171 to 51-9-185.
  Appointment and commission, §51-9-175.
  Arrest and detention, §51-9-177.
  Bonds, surety, §51-9-181.
  Citation of article, §51-9-171.
  Definitions, §51-9-173.
  Firearms.
    Right to bear, §51-9-175.
  Law enforcement assistance during emergencies, §51-9-176.
  Liability of district, §51-9-179.
  Powers, §51-9-175.
  Termination of authority, §51-9-183.
  Training.
    Reimbursement by district, §51-9-175.
  Waiver of sovereign immunity, §51-9-185.
Rules and regulations.
  Board of directors, §51-9-127.
Savings clause, §51-9-163.
School lands, sixteenth section.
  Flooding of sixteenth section school lands not to constitute waste, §51-9-161.
State departments and agencies.
  Cooperation with other governmental agencies, §51-9-153.
Taxation.
  Exemption from taxation, §51-9-157.
    Metropolitan area water supply, §51-9-217.
  Property taxes.
    Special tax levy for payment of bonds, §51-9-139.
    State tax used for water supply district fund, §51-9-131.
Waste.
  Overflow of school lands not to constitute waste, §51-9-161.

PERRY COUNTY.
Black creek.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.4.

PETITIONS.
Drainage districts.
  Dissolution of districts, §§51-33-93, 51-33-101, 51-33-107.
  Drainage districts with county commissioners.
    Creation of districts, §§51-31-21, 51-31-25, 51-31-31.
  Drainage districts with local commissioners.
    Consolidation of districts, §51-29-147.
    Creation of district, §51-29-11.
    District coming under provisions, §51-29-103.
    Enlargement of boundaries, §51-29-135.
    Reforestation, §51-29-161.
  Soil and water conservation.
    Additional powers for, §51-33-5.
Joint water management districts.
  Corporate body.
    Acquisition and assumption of powers, duties and responsibilities of district, §51-8-63.
  Creation, §51-8-1.
    Election, §51-8-11.
Oil and gas board.
  Integration and pooling of interest.
    Notice for hearing on petition, §53-3-7.
Pat Harrison waterway district.
  Creation of district, §§51-15-107, 51-15-109.
Pearl river valley water supply district.
  Creation of district, §51-9-109.
Surface coal mining and reclamation.
  Designation of lands as unsuitable for surface coal mining operations, §53-9-71.
Surface mining and reclamation.
  Designation of certain lands as unsuitable for surface mining, §§53-7-49, 53-7-51.
Urban flood and drainage control districts.
  Creation of districts, §51-35-307.
    Appeal from order creating or dismissing petition, §51-35-313.
Water management districts.
  Creation, §§51-7-9, 51-7-11.
  Dissolution, §51-7-43.

PIKE COUNTY.
Tangipahoa River.
  Scenic streams stewardship program.
    Eligibility for nomination, §51-4-21.1.
    Portion designated as scenic stream, §51-4-23.1.

PIPELINES.
Oil and gas.
  Connection with pipeline.
    Certificate of compliance required, §53-3-15.

PLANNING.
Drainage districts with local commissioners.
  Alteration of plans, §51-29-71.
  Filing of plans and estimates of commission, §51-29-27.
  Plans for improvement of district, §§51-29-19, 51-29-21.

POLLUTION CONTROL.
Marine litter, §§51-2-1 to 51-2-7.

PRISON TERMS.
Oil and gas board, §53-1-47.
Surface coal mining and reclamation, §§53-9-57, 53-9-61.
  Conflicts of interest.
    Department employees, §53-9-19.

PROPERTY TAXES.
Exemptions.
  Public water authorities, §51-41-19.
    Bond issues, §51-41-27.
Flood control.
  Federal agreements with drainage districts.
    Drainage district taxes, §§51-35-7, 51-35-13.
Joint water management districts.
  Special tax levy, §51-8-43.
Pat Harrison waterway district.
  State tax used for water supply district fund, §51-15-129.
Pearl river basin development district.
  Election on question of levy, §51-11-9.
  Flood control district.
    Levy for payment of bonds, §51-11-73.
  Payments to district by county, §51-11-31.
  State tax used for development district fund, §51-11-33.

PROPERTY TAXES —Cont'd
Pearl river valley water supply district.
  Special tax levy for payment of bonds, §51-9-139.
  State tax used for water supply district fund, §51-9-131.
Storm water management districts.
  Tax-exempt status, §51-39-37.
Swamp land district.
  Levy, §51-33-205.
Tombigbee river valley water management district.
  County election on question of tax levy, §51-13-107.
  Payments by counties to district, §51-13-129.
  State tax used for water supply district fund, §51-13-121.
Water management districts.
  Apportionment and distribution of taxes collected in counties lying in two or more districts.
    Contracts between districts, §51-7-71.
  Assessments, §51-7-29.
    Benefited lands outside of district, §51-7-30.
    Damages which will accrue to landowner, §51-7-31.
  Joint water management districts.
    Special tax levy, §51-8-43.
  Levies, §51-7-29.

PUBLICATION OF NOTICE.
Drainage districts.
  Dissolution by cumulative method.
    Hearings, §51-33-109.
Public water authorities.
  Bond issues, §51-41-21.

PUBLIC FUNDS.
Oil and gas conservation fund, §53-1-77.
Surface coal mining and reclamation fund, §53-9-89.
Surface mine worker safety training program operations fund, §53-7-77.

PUBLIC SERVICE COMMISSION.
Pearl river valley water supply district.
  Authority of commission, §51-9-155.

PUBLIC WATER AUTHORITIES, §§51-41-1 to 51-41-33.
Attorney general.
  Submission of act, §51-41-33.

PUBLIC WATER AUTHORITIES —Cont'd
Authority to act, §§51-41-7, 51-41-33.
  Powers generally, §51-41-17.
Board of directors, §51-41-13.
Bond issues, §51-41-21.
  Execution of bonds, §51-41-23.
  Proceeds from issuance of bonds, §51-41-29.
    Refunding bonds, §51-41-31.
  Refunding bonds, §51-41-31.
  Security for bonds, §51-41-25.
  Tax exemptions, §51-41-27.
Bonds, surety.
  Board of directors, §51-41-13.
  Secretary-treasurer, §51-41-15.
Construction of statutes, §51-41-5.
Definitions, §51-41-3.
Incorporation as a water authority, §51-41-9.
  Creation and existence, §51-41-11.
Interpretation of statutes, §51-41-5.
Legislative intent, §51-41-1.
Names, §51-41-9.
Officers, §51-41-15.
Powers, §51-41-17.
  Authority to act, §51-41-7.
Reconstitution as a water authority, §51-41-9.
  Creation and existence, §51-41-11.
Submission of act, §51-41-33.
Tax exemptions, §51-41-19.
  Bond issues, §51-41-27.

R

RAILROADS.
Drainage districts.
  Drainage districts with county commissioners.
    Assessing railroad for benefits, §51-31-93.
    Passing railroads with canal, §§51-31-89, 51-31-91.
  Drainage districts with local commissioners.
    Ditches may cross railroads, §51-29-95.

RANKIN COUNTY.
Water supply district, §§51-9-101 to 51-9-227.

RECEIVERS.
Drainage districts, §§51-33-75 to 51-33-89.

RECEIVERS —Cont'd
Pearl River valley water supply district.
  Metropolitan area water supply.
    Representation of bond owners, §51-9-215.
Public water authorities.
  Bond issues, §51-41-25.

RECORDS.
Drainage districts.
  Drainage districts with county commissioners.
    Tax sales, §51-31-135.
  Receivers for certain districts, §51-33-79.
Oil and gas board.
  Public inspection of records, §53-1-31.
  Rules, regulations and orders, §53-1-27.
Surface mining and reclamation.
  Permittees, §§53-7-53, 53-9-51.
Water well drillers, §51-5-13.

REFERENDUM.
Storm water management districts.
  Referendum on creation, §51-39-9.

REPORTS.
Drainage districts.
  Drainage districts with county commissioners.
    Report of commissioners, §§51-31-35, 51-31-37.
Geological and mineral survey.
  Publication, §53-5-11.
Oil and gas.
  Producer or operator of oil or gas well, §§53-3-35, 53-3-37.
Pearl river valley water supply district.
  Creation, report of board of water commissioners, §51-9-111.
Surface coal mining and reclamation.
  Permittees, §53-9-51.
Surface mining and reclamation.
  Inspection reports, §53-7-55.
    Soil and water conservation districts, §53-7-57.
  Permittees, §53-7-53.
Water resources.
  Permit holders, §51-3-23.
Water well drillers, §51-5-13.

RESERVOIRS.
Pearl river valley supply district.
  Police officers, §§51-9-171 to 51-9-185.

RIGHT OF ENTRY.
Abandoned mine lands reclamation.
  Property adversely affected by past coal mining, §53-9-107.
Drainage districts with county commissioners.
  Commissioners may go on land, §51-31-83.
Geological and mineral survey.
  Survey employees may go on lands, §53-5-13.
Oil and gas board.
  Supervisor and representatives to have access to all wells, §53-1-33.
Surface coal mining and reclamation.
  Inspections by administrator, §53-9-51.
Surface mining and reclamation.
  Bond forfeiture.
    Continuing right of entry, §53-7-35.

RIGHT OF WAY.
Drainage districts.
  Drainage districts with county commissioners.
    Agreements, §51-31-55.
  Drainage districts with local commissioners.
    Acquisition of rights of way through existing districts, §51-29-125.
    Ownership and disposition of rights of way, §51-29-123.
  Flood control.
    Acquisition in connection with agreements with United States, §§51-35-9 to 51-35-15.
Flood control.
  Federal agreements with drainage districts, §§51-35-9 to 51-35-15.
Water management districts.
  Acquisition by board of commissioners, §51-7-33.

RIVERS AND STREAMS.
State scenic streams stewardship program, §§51-4-1 to 51-4-23.10.

ROYALTIES.
Oil and gas.
  Interest on royalty proceeds which have not been disbursed.
    Payment, §53-3-39.

ROYALTIES —Cont'd
Oil and gas —Cont'd
  Lien to secure payment of royalty proceeds, §53-3-41.

S

SCENIC STREAMS STEWARDSHIP PROGRAM, §§51-4-1 to 51-4-23.10.
Administration, §§51-4-7, 51-4-15.
Advisory council, §§51-4-9, 51-4-11.
Bear creek.
  Designation as state scenic stream, §51-4-23.6.
  Eligibility for nomination, §51-4-21.4.
Black creek.
  Designation as state scenic stream, §51-4-23.4.
Chunky creek and chunky river.
  Designation of portions as state scenic streams, §51-4-23.3.
  Eligibility for nomination, §51-4-21.2.
Cooperative voluntary stewardship plan, §51-4-11.
Definitions, §51-4-3.
Designation of scenic streams.
  Eligibility criteria, §51-4-7.
  Legislative designation, §51-4-9.
  Nomination, §§51-4-9, 51-4-11.
  Pilot programs, §51-4-17.
  Public comment, §51-4-9.
  Request for stream evaluation, §51-4-7.
Escatawpa River.
  Eligibility for nomination, §51-4-21.6.
  Portion designated as scenic stream, §51-4-23.10.
Establishment, §51-4-7.
Existing or future uses not affected, §51-4-13.
Intergovernmental cooperation, §51-4-15.
Magee's Creek.
  Designation as state scenic stream, §51-4-23.2.
  Eligibility for nomination, §51-4-21.
Noxubee River.
  Portion designated as scenic stream, §51-4-23.9.
  Portion eligible for nomination, §51-4-21.9.
Pascagoula river.
  Designation as state scenic streams, §51-4-23.5.

SCENIC STREAMS STEWARDSHIP PROGRAM —Cont'd
Pascagoula river —Cont'd
  Eligibility for nomination, §51-4-21.3.
Pilot programs.
  Establishment for designated streams, §51-4-17.
Protection of private property rights, §§51-4-11, 51-4-17.
Public policy, §51-4-5.
Public right of access, §51-4-19.
Red Creek.
  Designation of portion as state scenic stream, §51-4-23.7.
  Eligibility for nomination, §51-4-21.5.
Reversion of donated land, §51-4-11.
Tangipahoa River.
  Eligibility for nomination, §51-4-21.1.
  Portion designated as scenic stream, §51-4-23.1.
Title of act, §51-4-1.
Tombigbee River.
  Designation of portion as state scenic stream, §51-4-23.8.
  Eligibility of portions for nomination, §51-4-21.7.
Wolf River.
  Designation as scenic stream, §51-4-23.

SEALS AND SEALED INSTRUMENTS.
Joint water management districts.
  Board of commissioners, §51-8-23.
Public water authorities.
  Bond issues.
    Execution of bonds, §51-41-23.

SEIZURE.
Oil and gas.
  Illegal oil and gas.
    Seizure and sale as contraband, §53-3-19.

SERVICE OF NOTICE, PROCESS AND OTHER PAPERS.
Oil and gas board.
  Notices, §53-1-25.
  Service upon board, §53-1-37.

SETTLEMENT.
Drainage districts.
  Receiverships for certain districts.
    Compromise of assessments between landowners and bondholders, §51-33-85.

SHOW CAUSE ORDERS.
Surface coal mining and reclamation of land.
  Disciplinary action against permittee, §53-9-69.

SIGNATURES.
Public water authorities.
  Bond issues.
    Execution of bonds, §51-41-23.

SIGNS.
Surface coal mining and reclamation.
  Entrance of surface coal mining and reclamation operation, §53-9-53.

SIXTEENTH SECTION SCHOOL LANDS.
Pat Harrison waterway district.
  Flooding of lands, §51-15-159.
Pearl river basin development district.
  Flooding of lands, §51-11-47.
Pearl river valley water supply district.
  Flooding of lands, §51-9-161.

SOIL AND WATER CONSERVATION.
Dissolved drainage districts.
  Continuation of maintenance of existing structures, §51-33-127.
  Transfer of attributes, §51-33-127.
  Transfer of certain duties, §51-33-125.

SOVEREIGN IMMUNITY.
Abandoned mine lands reclamation.
  Federal law compliance, §53-9-105.
Pearl river valley water supply district reservoir police officers.
  Provisions not construed to waive sovereign immunity, §51-9-185.

STATE DEPARTMENTS AND AGENCIES.
Pat Harrison waterway district.
  Cooperation with other governmental agencies, §51-15-151.
Pearl river basin development district.
  Cooperation with other governmental agencies, §51-11-43.
  Flood control district.
    Cooperation and coordination with political entities, §51-11-85.
Pearl river valley water supply district.
  Cooperation with other governmental agencies, §51-9-153.

STATE DEPARTMENTS AND AGENCIES —Cont'd
Surface mining and reclamation.
  Reclamation work.
    Utilizing services of governmental agencies, §53-7-71.
Tombigbee river valley water management district.
  Cooperation with other governmental agencies, §51-13-145.
Urban flood and drainage control districts.
  Cooperation with other governmental agencies, §51-35-347.

STATE DEPOSITORY COMMISSION.
Depositories for state funds.
  Bonds as security for state funds.
    Pearl river valley water supply district, §51-9-147.

STATE OIL AND GAS BOARD, §§53-1-1 to 53-1-77.

STATUTE OF LIMITATIONS.
Oil and gas.
  Damages.
    Actions against nonresidents, §53-3-11.

STONE COUNTY.
Black creek.
  Scenic streams stewardship program.
    Portion designated as scenic stream, §51-4-23.4.
Red Creek.
  State scenic streams stewardship program eligibility, §51-4-21.5.
    Designation as state scenic stream, §51-4-23.7.

STORM WATER MANAGEMENT DISTRICTS, §§51-39-1 to 51-39-43.
Appeals.
  Ordinance or resolution, §51-39-15.
Best management practices.
  Scope of effect, §51-39-27.
Board of commissioners.
  Appointment, §51-39-21.
  Duties of officers, §51-39-21.
  General manager, §51-39-21.
  Hiring personnel, §51-39-21.
  Support services.
    Authority to contract with members, §51-39-23.
  Term of office, §51-39-21.
Certificate of incorporation.
  Criteria for issuance, §51-39-17.

STORM WATER MANAGEMENT DISTRICTS —Cont'd

Citation of title, §51-39-1.

Construction of act.

- Denial of access to persons holding appropriate permits, §51-39-41.
- Full and complete creation authority, §51-39-43.

Contracts.

- Incorporation agreements, §51-39-17.
  - Amendments, §51-39-19.
  - Designation of vote of each commissioner, §51-39-21.
- Public agencies authorized to contract with district, §51-39-31.

Corporate powers, §51-39-25.

Creation, §51-39-7.

Definitions, §51-39-5.

Eminent domain.

- Power to exercise, §51-39-29.

Financial reports.

- Filing requirements, §51-39-39.

Formation, §51-39-7.

Incorporation agreements, §51-39-17.

- Amendments, §51-39-19.
- Designation of vote of each commissioner, §51-39-21.

Incorporation of district, §51-39-17.

- Filing required documents, §51-39-17.
- Issuance of certificate of incorporation, §51-39-17.

Legislative intent, §51-39-3.

Meetings.

- Payment of cost, §51-39-13.

Notice.

- Payment of cost, §51-39-13.
- Publication of notice of incorporation, §51-39-17.

Ordinances.

- Adoption of ordinance authorizing district, §51-39-11.
- Appellate review, §51-39-15.

Permittee.

- Denial of access to persons holding appropriate permits, §51-39-41.

Public agencies.

- Assistance with public policy objectives, §51-39-35.
- Authority to contract for facilities and services, §51-39-31.
- Defined, §51-39-5.

Public policy, §51-39-3.

Referendum on creation.

- Filing of protest, §51-39-9.

Resolutions.

- Adoption resolution authorizing district, §51-39-11.

STORM WATER MANAGEMENT DISTRICTS —Cont'd

Resolutions —Cont'd

- Appellate review, §51-39-15.
- Filing of protest, §51-39-9.
- Formation, §51-39-7.
- Publication of adopted resolution, §51-39-9.

Revenues.

- Tax-exempt, §51-39-37.

Rights and duties of district, §51-39-25.

Rules and regulations.

- Scope of effect, §51-39-27.

Staff personnel.

- Authority to hire, §51-39-25.

Storm water management plan.

- Submission requirements, §51-39-33.

Tax-exempt status, §51-39-37.

Title of act, §51-39-1.

Withdrawal of membership, §51-39-19.

STREAMS.

Navigable waters.

- Obstruction of streams.
  - Logs, timber or lumber, §§51-1-7, 51-1-9.

State scenic streams stewardship program, §§51-4-1 to 51-4-23.10.

SUBPOENAS.

Oil and gas board, §53-1-35.

Surface mining and reclamation, §53-7-63.

SUBSURFACE WATERS.

Water well contractors, §§51-5-1 to 51-5-19.

SUPREME COURT OF MISSISSIPPI.

Appeals to supreme court.

- Oil and gas board, §53-1-45.

Oil and gas board.

- Appeals to supreme court, §53-1-45.

SURFACE MINING AND RECLAMATION, §§53-7-1 to 53-7-77.

Actions.

- Enforcement actions, §53-7-59.

Administration of chapter, §53-7-9.

Appeals.

- Decision of hearing, §53-7-65.
- Permits, §53-7-45.

Applicability of provisions, §53-7-7.

Bids and bidding.

- Reclamation work, §53-7-71.

SURFACE MINING AND RECLAMATION —Cont'd
Bonds, surety.
  Forfeiture.
    Continuing right of entry, §53-7-35.
  Performance bonds, §§53-7-27, 53-7-37.
  Permits, §53-7-23.
  Release of bond, §53-7-67.
Citation of act, §53-7-1.
Civil penalties.
  Actions to assess, §53-7-59.
Coal mining, §§53-9-1 to 53-9-89.
  Abandoned mine lands reclamation, §§53-9-101 to 53-9-123.
  Actions.
    Compelling compliance with provisions, §53-9-67.
    Release of bond, §53-9-65.
    Violations of provisions, §53-9-69.
  Administration of provisions, §53-9-9.
  Appeals, §53-9-77.
    Civil penalties, §53-9-55.
    Defined, §53-9-7.
    Permits.
      Action on applications, §53-9-39.
  Applicability of provisions.
    Exceptions, §53-9-81.
    Public corporations, §53-9-75.
  Blasting.
    Blasting plan.
      Permit applications, §53-9-25.
    Persons responsible for.
      Training, examination and certification, §53-9-87.
  Bonds, surety.
    Permit applicants, §53-9-31.
    Release of bond, §53-9-65.
  Citation of law, §53-9-1.
  Civil penalties, §53-9-55.
    Nonexclusivity of provisions, §53-9-63.
  Confidentiality, §53-9-43.
  Conflicts of interest.
    Department employees, §53-9-19.
  Criminal penalties, §§53-9-57, 53-9-61.
    Confidentiality violations, §53-9-43.
    Conflicts of interest.
      Department employees, §53-9-19.
    Nonexclusivity of provisions, §53-9-63.
  Damages.
    Confidentiality violations, §53-9-43.
  Definitions, §53-9-7.
  Enforcement of provisions, §53-9-9.

SURFACE MINING AND RECLAMATION —Cont'd
Coal mining —Cont'd
  Environmental quality commission.
    Rules and regulations, §§53-9-11, 53-9-19, 53-9-45.
      Designation of lands as unsuitable for surface coal mining operations, §53-9-71.
      Surface effects of underground coal mining, §53-9-47.
    United States Secretary of the Interior.
      Cooperative agreement with secretary, §53-9-73.
  Environmental quality department.
    Administration and enforcement of provisions, §53-9-9.
    Conflicts of interest.
      Employees, §53-9-19.
    Executive director.
      Powers and duties with regard to violations, §53-9-69.
    Inspections by department representatives, §53-9-51.
  Exceptions to provisions, §53-9-81.
  Fees.
    Deposit of funds received, §53-9-89.
    Permits, §53-9-28.
  Fund, §53-9-89.
  Injunctions.
    Violations of provisions, §53-9-69.
  Inspections.
    Alleged violations of provisions, §53-9-69.
    Department representatives, §53-9-51.
  Insurance.
    Permit applications.
      Insurance coverage, §53-9-25.
  Legislative declarations, §53-9-3.
  Notice.
    Rules and regulations.
      Hearings on, §53-9-11.
  Performance standards.
    Authorized departures from, §53-9-49.
    Promulgation, §53-9-45.
  Permits.
    Applications, §§53-9-25 to 53-9-31.
      Advertisement of land ownership, §53-9-37.
      Coal exploration permit, §53-9-41.
      Confidential information, exclusion of, §53-9-27.

SURFACE MINING AND RECLAMATION —Cont'd
Coal mining —Cont'd
  Permits —Cont'd
    Applications —Cont'd
      Filing with chancery court clerk, §53-9-27.
      Public inspection, §53-9-27.
      Reclamation plans, §53-9-29.
    Coal exploration permit, §53-9-41.
    Defined, §53-9-7.
    Fees, §53-9-28.
    Hearings on applications, §§53-9-37, 53-9-39.
    Plain language of proposed operation and reclamation, §53-9-32.
    Reclamation plans included in applications, §53-9-29.
    Reissuance, §53-9-23.
    Required, §53-9-21.
    Requisites for approval of application, §53-9-33.
    Revisions, §53-9-35.
    Successor in interest.
      Use by, §53-9-21.
    Term, §53-9-21.
  Public corporations.
    Applicability of provisions as to, §53-9-75.
  Purpose of provisions, §53-9-5.
  Reclamation plans.
    Defined, §53-9-7.
    Permit applications, §53-9-29.
  Records.
    Permittees, §53-9-51.
  Reports.
    Permittees, §53-9-51.
  Right of entry.
    Inspections by administrator, §53-9-51.
  Rules and regulations.
    Environmental quality commission, §§53-9-11, 53-9-19, 53-9-45.
      Designation of lands as unsuitable for surface coal mining operations, §53-9-71.
      Surface effects of underground coal mining, §53-9-47.
  Signs.
    Entrance of surface coal mining and reclamation operation, §53-9-53.
  Small operators.
    Permit applications.
      Cost assistance to small operators, §53-9-26.

SURFACE MINING AND RECLAMATION —Cont'd
Coal mining —Cont'd
  State coal deposits.
    Lease, §53-9-83.
  Trade secrets.
    Confidentiality, §53-9-43.
  United States Secretary of the Interior.
    Environmental quality commission.
      Cooperative agreement with secretary, §53-9-73.
  Unsuitable lands.
    Designation of lands as unsuitable for operations, §53-9-71.
  Water rights.
    Enforcement and protection of water rights, §53-9-85.
Confidentiality.
  Disclosure of confidential information, §53-7-75.
Contracts.
  Reclamation work.
    Private contractors, §53-7-71.
Criminal penalties, §53-7-61.
  Confidentiality violations, §53-7-75.
Definitions, §53-7-5.
Enforcement of chapter, §53-7-9.
Enforcement of provisions.
  Actions, §53-7-59.
  Proceedings on complaint alleging violation, §53-7-65.
Exemptions from provisions, §53-7-7.
Federal strip mining legislation.
  Commission to retain exclusive jurisdiction on passage of, §53-7-17.
Fees.
  Surface mine worker safety training, §53-7-77.
  Surface mining permit.
    Application fees, §53-7-25.
Hearings, §53-7-63.
Injunctions, §53-7-59.
Inspections, §53-7-55.
  Permits.
    On-site inspection of proposed area as condition of granting, §53-7-39.
  Release of bond, §53-7-67.
  Soil and water conservation districts, §53-7-57.
Investigations.
  Complaint alleging violation, §53-7-65.
Legislative declarations, §53-7-3.

SURFACE MINING AND RECLAMATION —Cont'd
Notice.
  Rules and regulations.
    Public hearing on, §53-7-11.
Parks and recreation.
  Mining prohibited in national and state park lands, §53-7-47.
Permits, §§53-7-21 to 53-7-29.
  Applications, §§53-7-25 to 53-7-29.
  Cancellation, §53-7-41.
  Denial, §53-7-41.
  Issuance and reissuance, §§53-7-41, 53-7-43.
  Modification, §§53-7-41, 53-7-43.
  On-site inspection of proposed area as condition of granting, §53-7-39.
  Recession, §53-7-41.
  Reclamation standards and methods to be required, §53-7-35.
  Requirement, §53-7-7.
  Review and recommendation of application, §53-7-39.
  Suspension, §53-7-41.
  Transfer, §§53-7-41, 53-7-43.
Powers and duties of commission, §53-7-19.
Reclamation plans, §53-7-31.
  Submission of plan, §53-7-23.
Records.
  Permittees, §53-7-53.
Reports.
  Inspection reports, §53-7-55.
    Soil and water conservation districts, §53-7-57.
  Permittees, §53-7-53.
Right of entry.
  Bond forfeiture.
    Continuing right of entry, §53-7-35.
Rules and regulations, §53-7-11.
State departments and agencies.
  Reclamation work.
    Utilizing services of governmental agencies, §53-7-71.
Storm water management districts, §§51-39-1 to 51-39-43.
Surface mine worker safety training program operations fund, §53-7-77.
Surface mining reclamation fund, §53-7-69.
Trade secrets.
  Applicability of trade secrets act, §53-7-75.

SURFACE MINING AND RECLAMATION —Cont'd
Unsuitable lands.
  Designation of certain lands as unsuitable for surface mining, §§53-7-49, 53-7-51.

SURVEYS AND SURVEYORS.
Geological and mineral survey, §§53-5-1 to 53-5-23.
Water resources, §51-3-43.

SWAMP LAND DISTRICTS, §§51-33-201 to 51-33-207.
Commissioners, §§51-33-201, 51-33-203, 51-33-207.
Property taxes, levy, §51-33-205.

T

TAX ASSESSORS.
Drainage districts with local commissioner.
  Assessment of lands, §51-33-47.
  Tax collections, §51-29-81.

TAXATION.
Drainage districts with county commissioners.
  Lists of lands sold by tax collector, §51-31-133.
  Record of tax sales, §51-31-135.
Joint water management districts.
  Exemption from taxes, §51-8-49.
  Property taxes.
    Special tax levy, §51-8-43.
Oil and gas board.
  Administration expense tax, §§53-1-71 to 53-1-77.
Pat Harrison waterway district.
  Exemption from taxes, §51-15-155.
  Property taxes.
    State tax used for water supply district fund, §51-15-129.
Pearl river basin development district.
  Additional funds from counties, §51-11-35.
  Exemption from taxation, §51-11-45.
    Flood control district, §51-11-79.
  Property taxes.
    Election on question of levy, §51-11-9.
    Flood control district bond payment, §51-11-73.
    Payments to district by county, §51-11-31.

TAXATION —Cont'd
Pearl river basin development district —Cont'd
  Property taxes —Cont'd
    State tax used for development district fund, §51-11-33.
Pearl river valley water supply district.
  Exemption from taxation, §51-9-157.
    Metropolitan area water supply, §51-9-217.
  Property taxes.
    Special tax levy for payment of bonds, §51-9-139.
    State tax used for water supply district fund, §51-9-131.
Storm water management districts.
  Tax-exempt status, §51-39-37.
Tombigbee river valley water management district.
  Exemption from taxes, §51-13-149.
  Property taxes.
    County election on question of tax levy, §51-13-107.
    Payments by counties to district, §51-13-129.
    State tax used for water supply district fund, §51-13-121.
Urban flood and drainage control districts.
  Bonds payable from ad valorem taxation, §51-35-333.
  Exemption from taxation, §51-35-339.

TAX COLLECTORS.
Drainage districts.
  Drainage districts with local commissioners.
    Duties of tax collector, §51-29-55.

TAX EXEMPTIONS.
Public water authorities, §51-41-19.
  Bond issues, §51-41-27.

TENNESSEE-TOMBIGBEE WATERWAY COMPACT, §§51-27-1 to 51-27-7.
Florida.
  Admission of state of Florida into compact, §51-27-7.
General provisions, §51-27-1.
  Text of compact, §51-27-1.
Kentucky.
  Admission of Commonwealth of Kentucky into compact, §51-27-5.
Tennessee.
  Admission of state of Tennessee into compact, §51-27-3.

TISHOMINGO COUNTY.
Bear creek.
  Scenic streams stewardship program.
    Designation as state scenic stream, §51-4-23.6.

TOMBIGBEE RIVER.
Scenic streams stewardship program.
  Designation of portion as state scenic stream, §51-4-23.8.
  Eligibility of portions for nomination, §51-4-21.7.

TOMBIGBEE RIVER VALLEY WATER MANAGEMENT DISTRICT, §§51-13-101 to 51-13-155.
Appropriation permits, §51-13-119.
Board of directors, §51-13-105.
  Rules and regulations, §51-13-117.
Bond issues, §§51-13-123 to 51-13-139.
  Tax exemption, §51-13-149.
Conflict of laws, §51-13-147.
Contracts.
  Construction contracts, §51-13-113.
  Powers of district, §51-13-111.
Cooperation with other governmental agencies, §51-13-145.
Creation of district, §51-13-107.
  Authority to organize, §51-13-103.
  Preliminary expenses, §51-13-151.
  Subsequent members, §51-13-109.
Depository for funds of district, §51-13-141.
Elections.
  County election on creation of district and levy of tax, §51-13-107.
Eminent domain.
  Powers of district, §51-13-111.
Highways.
  Federal highways.
    Agreements relative to, §51-13-143.
Interest.
  Bond issues, §51-13-125.
Legislative declaration, §51-13-101.
Limitation on amount of bonds, §51-13-127.
Parks and recreation.
  Powers as to facilities, §51-13-115.
Powers of district, §51-13-111.
  Park and recreation facilities, §51-13-115.
Property taxes.
  County election on question of tax levy, §51-13-107.

TOMBIGBEE RIVER VALLEY WATER MANAGEMENT DISTRICT —Cont'd
Property taxes —Cont'd
  Payments by counties to district, §51-13-129.
  State tax used for water supply district fund, §51-13-121.
Rules and regulations.
  Board of directors, §51-13-117.
Savings clause, §51-13-155.
School lands.
  Overflow of school lands not to constitute waste, §51-13-153.
Special fund, §51-13-131.
State departments and agencies.
  Cooperation with other governmental agencies, §51-13-145.
Taxation.
  Exemption from taxes, §51-13-149.
  Property taxes.
    County election on question of tax levy, §51-13-107.
    Payments by counties to district, §51-13-129.
    State tax used for water supply district fund, §51-13-121.
Waste.
  Overflow of school lands not to constitute waste, §51-13-153.

TOMBIGBEE VALLEY AUTHORITY, §§51-13-1 to 51-13-9.
Effect on other laws, §51-13-9.
Financing, §51-13-5.
Homestead exemption laws, applicability, §51-13-7.
Members, §51-13-1.
Powers and duties, §51-13-3.

TRADE SECRETS.
Surface coal mining and reclamation.
  Confidentiality, §53-9-43.
Surface mining and reclamation.
  Applicability of trade secrets act, §53-7-75.
Water resources.
  Disclosures not required, §51-3-44.

TRUSTS AND TRUSTEES.
Pat Harrison waterway district.
  Bond issues.
    Trust agreement, §51-15-141.
Pearl river basin development district bonds.
  Trust agreement, §51-11-29.
Pearl river valley water supply district bonds.
  Trust agreement, §51-9-143.
Tombigbee river valley water management district.
  Bond issues.
    Trust agreement, §51-13-135.

U

UNDERGROUND STORAGE TANKS.
Natural gas or compressed air, §§53-3-151 to 53-3-165.

UNITED STATES.
Corps of engineers.
  Drainage districts.
    Cooperative agreements with corps of engineers, §51-33-29.
Flood control.
  Federal agreements with drainage districts, §§51-35-1 to 51-35-25.
Joint water management districts.
  Agreements with federal government, §51-8-55.

URBAN FLOOD AND DRAINAGE CONTROL DISTRICTS.
Appeals.
  Creation of districts, §51-35-313.
Appropriation permits, §51-35-321.
Board of directors, §51-35-317.
Bond issues, §§51-35-323 to 51-35-339.
Borrowing money.
  Bond issues, §§51-35-323 to 51-35-339.
  Preliminary expenses, §51-35-341.
  Short-term borrowing by certain levee districts, §51-35-340.
Citation of law, §51-35-301.
Conflict of laws, §51-35-349.
Contracts.
  Agreements with United States, state or political subdivisions, §51-35-345.
  Construction contracts, §51-35-319.
Cooperation with other governmental agencies, §51-35-347.
Creation of districts.
  Authority to organize, §51-35-305.
  Procedure, §§51-35-307, 51-35-313.
Depository for funds of district, §51-35-343.
Elections.
  Bond elections.
    Calling election, §51-35-325.

URBAN FLOOD AND DRAINAGE CONTROL DISTRICTS —Cont'd
Elections —Cont'd
  Bond elections —Cont'd
    Procedure, §51-35-327.
    Results, §51-35-329.
Eminent domain.
  Powers of districts, §51-35-315.
Hearings.
  Creation of districts.
    Petitions, §51-35-311.
Legislative declaration, §51-35-303.
Notice.
  Bond election, §51-35-325.
  Bond redemption, §51-35-331.
  Construction contracts.
    Advertisement for sealed proposals, §51-35-319.
  Creation of districts.
    Hearing on petition, §51-35-309.
Petitions.
  Appeals, §51-35-313.
  Creation of districts, §51-35-307.
    Hearings, §§51-35-309, 51-35-311.
  Hearing on petition, §51-35-309.
Powers of districts, §51-35-315.
Savings clause, §51-35-351.
State departments and agencies.
  Cooperation with other governmental agencies, §51-35-347.
Taxation.
  Bonds payable from ad valorem taxation, §51-35-333.
  Exemption from taxation, §51-35-339.
Treasurer of district, §51-35-317.

UTILITY DISTRICTS.
Public water authorities, §§51-41-1 to 51-41-33.

W

WALTHALL COUNTY.
Magee's creek.
  Scenic streams stewardship program.
    Designation as state scenic stream, §51-4-23.2.
    Eligibility for nomination, §51-4-21.

WASTE OF PROPERTY.
Oil and gas.
  Defined, §53-1-3.
  Unlawful, §53-3-3.
Pat Harrison waterway district.
  Overflow of school lands not to constitute waste, §51-15-159.
Pearl River basin development district.
  Overflow of school lands not to constitute, §51-11-47.
Pearl River valley water supply district.
  Overflow of school lands not to constitute waste, §51-9-161.
Tombigbee River valley water management district.
  Overflow of school lands not to constitute waste, §51-13-153.

WATERCOURSES.
Navigable waters, §§51-1-1 to 51-1-11.
  Bridges.
    Damages to bridges, §51-1-11.
  Defined, §51-1-1.
  Obstructing waterways.
    Removal, §51-1-5.
      Lien for cost, §§51-1-7, 51-1-9.
  Oil and gas exploration, §§53-3-71 to 53-3-75.
  Public waterways.
    Operation of certain conveyances on public waterways prohibited, §51-1-4.
    Rights on, §51-1-4.
    What constitutes, §51-1-4.
State scenic streams stewardship program, §§51-4-1 to 51-4-23.10.
Storm water management districts, §§51-39-1 to 51-39-43.
Water management districts.
  General provisions, §§51-7-1 to 51-7-71.
  Joint water management districts, §§51-8-1 to 51-8-65.
Water resources.
  General provisions, §§51-3-1 to 51-3-55.

WATER DISTRICTS.
Public water authorities, §§51-41-1 to 51-41-33.

WATER MANAGEMENT DISTRICTS, §§51-7-1 to 51-7-71.
Appeals.
  Chancery court orders, §51-7-23.
Big Black River basin district.
  Preliminary expenses, §51-17-13.
Board of commissioners, §51-7-13.
  Development of plans, §51-7-15.
  Liability of members, §51-7-39.
  Powers, §§51-7-25 to 51-7-29, 51-7-33.

WATER MANAGEMENT DISTRICTS —Cont'd
Bond issues.
  Joint water management districts, §§51-8-35 to 51-8-49.
  Powers of board of commissioners, §51-7-27.
Bonds, surety.
  Board of commissioners, §51-7-13.
Chancery courts.
  Appeals from orders, §51-7-23.
  Approval of plans, §51-7-17.
  Hearing by chancellor on organization, §§51-7-17, 51-7-19.
Creation.
  Additional districts, §51-7-35.
  Completion of organization, §51-7-19.
  Petition, §51-7-9.
    Hearing on, §51-7-11.
  Subsequent projects, §51-7-21.
  Territory of districts, §51-7-5.
Damages.
  Assessment of damages that will accrue to landowner, §51-7-31.
  Liability of commissioners, §51-7-39.
Definitions, §51-7-3.
Dissolution, §§51-7-41 to 51-7-47.
Easements.
  Acquisition by board of commissioners, §51-7-33.
Enlargement or reduction of district, §51-7-7.
Existing districts, §51-7-35.
Immunities.
  Board of commissioners.
    Liability on damages, §51-7-39.
Joint water management districts.
  General provisions, §§51-8-1 to 51-8-65.
Mississippi Delta study.
  Expenditure of funds, §51-8-43.
Notice.
  Hearing by chancellor on organization, §§51-7-17, 51-7-19.
  Petition for creation of district, §51-7-11.
Oaths.
  Board of commissioners.
    Oath of office, §51-7-13.
Pat Harrison waterway district.
  General provisions, §§51-15-101 to 51-15-165.

WATER MANAGEMENT DISTRICTS —Cont'd
Pearl River basin development district.
  General provisions, §§51-11-11 to 51-11-87.
Pearl River valley water supply district.
  General provisions, §§51-9-101 to 51-9-227.
Property taxes.
  Apportionment and distribution of taxes collected in counties lying in two or more districts.
    Contracts between districts, §51-7-71.
  Assessments, §51-7-29.
    Benefited lands outside of district, §51-7-30.
    Damages which will accrue to landowner, §51-7-31.
  Joint water management districts.
    Special tax levy, §51-8-43.
  Levies, §51-7-29.
Purpose of provisions, §51-7-1.
Rights of way.
  Acquisition by board of commissioners, §51-7-33.
Surplus funds.
  Transfer, §51-7-49.
Territory of districts, §51-7-5.
  Enlargement or reduction, §51-7-7.
Tombigbee Valley water management district.
  General provisions, §§51-13-101 to 51-13-155.

WATER POLLUTION.
State scenic streams stewardship program, §§51-4-1 to 51-4-23.10.

WATER RESOURCES COUNCIL.
Repeal of provisions, §51-3-106.

WATER RIGHTS.
State scenic streams stewardship program, §§51-4-1 to 51-4-23.10.

WATERSHED REPAIR AND REHABILITATION COST-SHARE PROGRAM, §§51-37-1, 51-37-3.

WATER SUPPLY, §§51-3-1 to 51-3-55.
Adjudication of water rights by court.
  Clerk to forward copy of decree, §51-3-47.

WATER SUPPLY —Cont'd
Appeals, §51-3-49.
  Civil penalties, §51-3-55.
Bureau of land and water resources.
  Assistance to waterway, river basin and watershed authorities and districts.
    Powers and duties of bureau, §51-3-16.
Changes in approved diversion, §51-3-45.
Civil penalties for violations, §51-3-55.
Compacts.
  Commission may negotiate and recommend to legislature, §51-3-41.
Confidentiality, §51-3-44.
Definitions, §51-3-3.
Diversions.
  Changes in approved diversion, §51-3-45.
Drinking water.
  Water well contractors.
    Licensing and regulation, §§51-5-1 to 51-5-19.
Enforcement of provisions, §51-3-55.
Environmental quality department.
  Assistance to authorities and districts, §51-3-18.
Hearings.
  Procedures, §51-3-51.
Joint water management districts.
  General provisions, §§51-8-1 to 51-8-65.
Notice.
  Pre-existing rights or beneficial usage, §51-3-5.
Permits for water use.
  Applications, §51-3-31.
    Action of board on, §51-3-33.
    Approval, §51-3-35.
    Criteria for consideration, §51-3-13.
    False or inaccurate information in support of, §51-3-55.
  Duration, §51-3-9.
  Fees.
    Application fee, §51-3-31.
  Hearings on, §51-3-15.
  Reissuance, §51-3-9.
  Requirement, §51-3-5.
    Exemptions, §51-3-7.
  State permit board.
    Powers, §51-3-15.
  Unpermitted waters, §51-3-29.

WATER SUPPLY —Cont'd
Policy of state, §51-3-1.
Public water authorities, §§51-41-1 to 51-41-33.
Reports.
  Permit holders, §51-3-23.
Rules and regulations, §51-3-25.
State water management plan, §51-3-21.
Storm water management districts, §§51-39-1 to 51-39-43.
Subsurface waters.
  Water well contractors, §§51-5-1 to 51-5-19.
Surface coal mining and reclamation.
  Enforcement and protection of water rights, §53-9-85.
Surveys and surveyors, §51-3-43.
Trade secrets.
  Disclosures not required, §51-3-44.
Unpermitted waters, §51-3-29.
Water management districts.
  General provisions, §§51-7-1 to 51-7-71.
  Joint water management districts, §§51-8-1 to 51-8-65.
Water use caution area.
  Declaration, §51-3-11.
Water use warnings.
  Issuance, §51-3-11.

WATER SYSTEMS.
Generally, §§51-3-1 to 51-3-55.

WATER WELL CONTRACTORS, §§51-5-1 to 51-5-19.
Advisory committee, §51-5-15.
Board of water commissioners.
  Advisory committee, §51-5-15.
  Violations of provisions.
    Duties upon, §51-5-7.
Commission on environmental quality.
  Powers, §51-5-5.
Licenses, §51-5-1.
  Engaging in business without license.
    Penalties, §51-5-17.
  Qualifications, §51-5-3.
  Revocation, §§51-5-9, 51-5-11.
Penalties for violations, §51-5-17.
Records, §51-5-13.
Reports, §51-5-13.
Supplementary nature of provisions, §51-5-19.
Violations of provisions.
  Duties of board upon, §51-5-7.

WATER WELL CONTRACTORS —Cont'd
Violations of provisions —Cont'd
  Penalties, §51-5-17.
  Revocation of license, §§51-5-9, 51-5-11.

WELLS.
Injection wells.
  Geologic sequestration of carbon dioxide, §§53-11-1 to 53-11-33.
Water well contractors.
  Generally, §§51-5-1 to 51-5-19.

WILDLIFE, FISHERIES AND PARKS DEPARTMENT.
State scenic streams stewardship program.
  Administration of program, §§51-4-7, 51-4-15.
  General provisions, §§51-4-1 to 51-4-23.10.

WINDSTORM MITIGATION PROGRAMS.
Municipal fire protection fund.
  Use of money appropriated for, §53-1-37.

WITNESSES.
Oil and gas board.
  Powers as to witnesses, §53-1-35.

WOLF RIVER.
Scenic streams stewardship program.
  Designation as scenic stream, §51-4-23.

Y

YELLOW CREEK WATERSHED AUTHORITY, §§51-25-2 to 51-25-8.
Additional nature of provisions, §51-25-8.
Composition, §51-25-2.
Contracts, §51-25-4.
Financing, §51-25-6.
Powers, §51-25-4.
Supplemental nature of provisions, §51-25-8.